October 27. 1874 Field J.

Argued 23-77

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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. ~~309.~~ 38

SIEWARD AND KIP, APPELLANTS,

vs.

THE STEAMSHIP TEUTONIA, ETC., JOACHIM MEYER, MASTER, ETC.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF LOUISIANA.

FILED DECEMBER 3, 1872.

Oct Term 1874

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1 Circuit court of the United States for the fifth judicial circuit, and district of Louisiana.

SIEWERD & KIP *vs.* STEAMSHIP TEUTONIA. } No. 6689.

I. S. Whitaker, for libellants and appellants.
E. W. Huntington, for claimants and appellees.

Transcript of record on appeal, returnable to the Supreme Court of the United States the first Monday of December, 1872.

1½ U. S. circuit court. No. 6689. Filed March 30, 1872.

A. H. SEWARD & A. P. KIP *vs.* STEAMSHIP TEUTONIA. } In admiralty.

Whitaker & Rice, and A. Voorhies, for libellants; E. W. Huntington, for claimants.

1¾ In admiralty.

To the honorable judge of the district court of the United States for the district of Louisiana:

Adolphe Henry Seward and Anthony Parker Kip, owners of the steamer A. G. Brown, hereinafter fully mentioned and described, exhibit this their libel against the steamship Teutonia, now lying in the port of New Orleans, in the district of Louisiana aforesaid, and within the admiralty and maritime jurisdiction of this honorable court, and against the engines, machinery, boats, tackle, apparel, and furniture of said vessel, and against all persons intervening for their interest therein, in a cause of collision, civil and maritime; and thereupon the said owners of the said steamer A. G. Brown do allege:

1st. That the said steamer A. G. Brown, of the burthen of one hundred and thirty-five tons, and at the time when the cause of action hereinafter set forth, was enrolled and licensed in this collector district and was employed in the business of common carrier from and to the port of New Orleans to the southwest pass of the Mississippi River, upon the waters of said river.

2 2d. That on the 30th day of December, eighteen hundred and sixty-eight, at about eleven o'clock in the night, the aforesaid steamer A. G. Brown, being tight, staunch, and well manned and provided, was getting under way a short distance from a landing, known as that of the Woodland plantation, in the parish of Plaquemine, State of Louisiana, on her way crossing the river, headed down stream; that, while thus moving, the said steamship Teutonia, of the burden of about two thousand tons, coming up the river under a full head of steam and under the united impulsion of its engine and steam-power; that the said steamer A. G. Brown had already blown one whistle in order to notify freighters and passengers that she was coming, that is, for passengers and shippers being on the east side of the Mississippi River, and also a warning to any vessels, crafts, or steamers that might be on the river at that time; that shortly after leaving the opposite bank, being then in the river, but nearer to the east side, the said steamship Teutonia was coming up the

opposite shore, on the right bank of the river, and crossing the river and approaching the Brown, and then blew signal-whistle twice, to which the steamer Brown answered twice also; that immediately after the steamer Brown had so responded, the said steamship Teutonia blew one whistle, to which signal the said steamer A. G. Brown responded by two whistles, as she was close to the east shore of the river; the said steamship Teutonia then again blew two whistles, and the said steamer Brown answered back by one whistle and immediately stopped her engines; that said steamship Teutonia was then crossing and approaching the steamer A. G. Brown; that the captain of the said steamer then ordered the
3 pilot to back her and hallooed at the said steamship that she would sink his vessel or at all events run into her; that no attention was paid to said warning, but said steamship came on with a full head of steam, striking the said steamer A. G. Brown on her starboard side, forward, staving her in and making a large hole in her hull, putting her at once in a sinking condition; that thereupon the steamer A. G. Brown was brought to shore and there made fast, but the water gained so fast that she careened over to the la'board side and became a total loss—to the damage and detriment of the owners thereof in the full sum of twelve thousand dollars.

3d. That, at the time, the said A. G. Brown was properly managed, and had, before she was so struck, her lights out and showing clearly as by law required; that she was in her proper place at the time and gave the due signals, and did her best to avoid the collision, which was brought on her by the negligence and carelessness of the officers and crew of the said steamship Teutonia; and that the said latter vessel might have avoided the collision with the most ordinary care and prudence.

4th. That at the time when the danger of a collision was first perceived on board the steamer A. G. Brown it became impossible, notwithstanding the most energetic and immediate efforts of the officers and crew, to get her out of the way of the said steamship Teutonia, then coming upon her with full head of steam, and out of her proper place and direction at the time.

5th. That libellants were at the time of said collision the true and lawful owners of said steamer A. G. Brown; and that by reason of the careless, negligent, unskillful, and improper management of the said
4 steamship Teutonia, libellants have suffered damages to the amount of twelve thousand dollars, for which they claim reparation in this suit.

6th. That all and singular the premises are true and are within the admiralty and maritime jurisdiction of this honorable court.

Wherefore libellants pray that process in due form of law may issue against the said steamship Teutonia, engine, machinery, boats, tackle, apparel, and furniture; and that this honorable court will pronounce for the damages aforesaid, with interest from judicial demand, and decree the same to be paid with costs; and for such other and further relief and redress as to right and justice may appertain, and this court is competent to grant in the premises.

ANTHONY P. KIP.

A. & M. VOORHIES, *Proctors.*

Personally appeared on this 5th January, 1869, Anthony P. Kip, a member of the firm of Seward & Kip, libellants, and makes oath to the truth of the foregoing libel before me.

K. LOEW,
U. S. Commissioner.

5 United States district court.

A. H. SEWARD AND A. P. KIP
vs.
STEAMSHIP TEUTONIA.

Now comes Joachim Meyer, master and claimant of the said steamship Teutonia, and for answer to the libel of A. H. Seward and A. P. Kip against the said steamship, doth allege and propound as follows, to wit:

First. That the Hamburg-American Steam Packet Company are the true and bona-fide owners of said steamship, and that no other person is the owner thereof.

Second. That respondent, admitting the several matters alleged in the first article of said libel to be true, further alleges and propounds that the matters in the second, third, fourth, and fifth articles of said libel are in great part falsely alleged, and that the truth is as hereinafter propounded.

Third. That the said steamship Teutonia, being in good order, and well and sufficiently equipped and manned, sailed from the port of Hamburg, in Germany, in the month of December, 1868, bound for this port; that on the 30th day of December, 1868, at about eleven o'clock at night, whilst the said steamship was ascending the Mississippi River, on the starboard shore, her engines at that time going slowly, William
6 Nelson, a duly-licensed pilot, who had charge of the said steamship, the master thereof, and the second and third officer, quartermaster, and that part of the crew which composed the watch then on the deck of the Teutonia, heard three whistles of a steamer; that thereupon signals were given by the Teutonia, and her engines were stopped; that the Teutonia blew one whistle for "starboard shore," but no answer was returned to it. She then blew three "attention whistles," meaning to say "look out for yourself," but no answer was given to them. She again blew one long whistle, and repeated it two or three times without receiving any answer; that the lights of a steamer two points on the port bow of the Teutonia, coming towards her, were then discovered, whereupon the pilot of the Teutonia ordered her helm to be put hard-a-port, which order was immediately executed; that the steamer aforesaid, which respondent is informed was the A. G. Brown, notwithstanding the signals and warnings given by the said steamship Teutonia as aforesaid, and notwithstanding she might, with ease and safety, have kept clear of the said steamship Teutonia, kept on her course, and ran with great force and violence foul of the said steamship, striking her on the port side, about one hundred and fifteen feet from the stern of the Teutonia.

Fourth. That no signals were given by the said steamer A. G. Brown, and nothing was done by her officers and crew which could enable the pilot or master nor any of the crew of the said steamship Teutonia, to ascertain or determine what course the said A. G. Brown intended to pursue.

7 Fifth. That the pilot and master and crew of the said steamship Teutonia used the greatest care and skill in the management of the same on the night aforesaid, and took every possible precaution to prevent the occurrence of any accident.

Sixth. That the collision aforesaid was caused by the fault and negligence of the officers and crew of the said steamer A. G. Brown, and that it was not occasioned by any want of care or skill on the part of

said pilot or master, or any of the crew on board said steamship Teutonia, as is falsely alleged in said libel.

Seventh. That respondent has no knowledge of the damage caused by said collision, but has been informed and believes that the same did not amount to the sum alleged in said libel.

Eighth. That all and singular the premises are true; in verification whereof, if denied, the respondent craves leave to refer to the depositions and other proofs to be by him exhibited in this cause.

Wherefore respondent prays that this honorable court would be pleased to pronounce against the libel aforesaid, and to condemn the libellants in costs, and otherwise right and justice to administer in the premises.

J. MEYER, *Master, Respondent.*

E. W. HUNTINGTON, *Proctor.*

Sworn to and subscribed before me this 9th January, 1869.

K. LOEW,
U. S. Commissioner.

8 *Testimony of E. N. Dural.*

SEWARD & KIP
versus
STEAMSHIP TEUTONIA.

Testimony for libellants, taken before K. Loew, U. S. commissioner, February 25, 1870, in presence of Whitaker & Voorhies, for libellants, and E. W. Huntington, for claimants.

E. N. DURAL, sworn for libellants, says:

I am pilot; was piloting the A. G. Brown in 1868—on 30th December, 1868.

The Brown was trading between this city and Fort Jackson. Mr. Armstrong was with me as pilot also. Capt. Basset was in command of the Brown. After the accident occurred the Brown laid at Bradish Johnson's wharf. This place is fo'ty-five miles from the city of New Orleans.

After we had taken in sugar we backed away from the shore and rounded to, and I then blew three long whistles. This was a general signal in case any boat was coming up or down. After I had blown the three long whistles I heard two whistles from the Teutonia, that she would go to the left bank. I immediately answered her signal and blew two whistles also. After running for about two or three minutes I again blew the whistle. I blew two whistles, and she answered with two whistles, and she was still on the left bank coming up. She then again blew one whistle, thus reversing her signal. I again blew my two whis-

9 tles, and stopped the boat. The Teutonia came up and struck us on our starboard bow. The Brown was backing at the time, to avoid the Teutonia, but the Teutonia did not stop. We were struck somewhere between the boilers and the bow of the boat; cannot exactly say. The Teutonia never stopped after the collision, but continued her course. The plantation of Bradish Johnson is on the left bank coming up. We were about six or seven hundred yards from the east shore when I blew the three whistles; can't say exactly. I had then already rounded to.

(Being shown Diagram 9, says:) Woodland, or Bradish Johnson's

place, is laid down on the right side. The plan does not indicate the exact position of the vessels at time of collision. The Teutonia, after blowing one whistle, went to the east shore and crossed over. She came from the opposite side of the river and crossed the bow of the Brown. The Brown was backing at the time the Teutonia hit her. The Teutonia's port side hit our starboard side. The Brown was pointed a little up stream rather than down stream, at the time the T. hit us. The tow was lying a little above us at the time of collision; can't exactly say how far. I was at the pilot-house at the time. On account of the Teutonia crossing whistles, I was trying to make the bank. I can neither read nor write. About one-half an hour after the blow the Brown went down.

When I first heard the T. whistle she was about one-half a mile or a mile from us; but I could not see her distinctly before she was upon us.

10 The tow had her lights out; saw one white light on her. The Brown had all her lights out till she sunk. Saw one light on the Teutonia, on her masthead, which was the only light I saw on her. I could not avoid the blow of the Teutonia, although I did all I could.

his
E. N. + DURAB.
mark.

Sworn to and mark affixed before me this 25th February, 1870.
K. LOEW,
U. S. Commissioner.

Capt. BASSETT, recalled for libellants, says:

Diagram 9 pretty nearly gives a correct outline of the river. The position of the tow is not correct. She was farther up the river. She was anchored right off the Woodland place. The collision occurred just above the rice-mill. At the time the whistle was blown the Teutonia was on the right bank, or Algiers shore. The wind was then blowing a gale from that shore. We rounded out from the Woodland landing, and about the time we had come two-thirds on the other or left shore and straightened down the river, the Teutonia blew two whistles from the Algiers side. We answered her two whistles. After we had done so, probably five minutes intervened, when the T. blew one whistle. We answered back two again. She blew one, and I then stopped the boat and backed her, and the Teutonia came across and ran into us. The striking is pretty well correctly given in the diagram 9. Her port-side struck the Brown's starboard side opposite the steps. The two

11 vessels came near to an angle when they struck. The position of the vessels was more angly than the map shows. (Shown Diagram D—says:) It is not a correct delineation in any particular. The man who drew that map knows nothing about the river.

W. S. BASSETT.

Sworn to and subscribed before me this 25th February, 1870.
K. LOEW,
U. S. Commissioner.

12 *Testimony of Thomas Brown.*

SEWARD & KIPP
vs.
STEAMSHIP TEUTONIA.

Testimony for libellants, taken before K. Loew, U. S. commissioner, March 1. 1869. Present, A. & M. Voorhies, proctors for libellants, and E. W. Huntington, for claimant.

THOMAS BROWN, sworn for libellants, says:

Am forty years of age; reside in New Orleans; my occupation is that of fireman on board steamboats; am now fireman on the Alloe, who took the place of the Brown; was on the Brown in that capacity at the time of the collision, which happened on a Wednesday night, on the 30th December, 1868, between the hours of eleven and twelve at night; was on the larboard guard at the time, by the blacksmith-shop. It was very dark and rainy, and not very foggy. I could see the land on both sides. At the time I was at the larboard guard near the blacksmith-shop, the boat had just rounded to, below the "Woodland plantation;" could not tell on which side, as we had just rounded out from the Woodland plantation, and as the night was very dark. After we rounded to, the first I heard was the two whistles blown by the pilot of the Brown; then the Teutonia answered two; then the Teutonia blowed one whistle; then our pilot blowed two again; and then the Teutonia blowed two again—came up and struck us just on our larboard
13 bow. I could see but one light on the Teutonia—at the foremast head. The Teutonia never stopped, and kept going ahead all the time. I calculate that the Brown sunk about half an hour after the collision.

Cross-examination:

It could not be more than one-quarter of an hour from the time the first whistle was blown by the Teutonia that the Brown was struck; was standing on the guard, and did not see the Teutonia until she was right up to us. We must have been about one hundred yards from the shore when we were struck by the Teutonia. I guess it was on the New Orleans shore; could not see the shore quite distinctly, on account of the fog and darkness, and from the fact that I was not looking at shore. The water must have been about twenty fathoms deep where the accident occurred, as it was near the middle of the river, as near as I could judge; know nothing about the river, as I am no pilot. Was not on duty at the time of the collision. Just as soon as the Brown was struck I went and joined my partner, to fire the boat and raise as much steam as possible to make for the shore. We were engaged at that about half an hour. While I was so engaged I paid attention to nothing else but my business. The Brown was going ahead at the time she was struck by the Teutonia. Just before the collision the pilot of the Brown rang the bell to stop her, and then he rang the bell to back her, but cannot say whether it was for both wheels or one, but know it was to back her. When I first saw the Teutonia she was not
14 more than ten yards from us, because the second time I saw her she struck us. The blacksmith-shop is right for'ard of the wheel-house; it is connected with the wheel-house. It seemed to me that the Teutonia was coming up stream, and then must have crossed the river when she struck us. The Brown was going down stream. After the

collision we ran the Brown ashore, and did all we could to save her; worked the syphon pump and others, and went down in the hold to try and stop the water. The Brown was ran ashore about one-quarter of a mile from the place where she was struck. All hands were set to work when the boat was ran ashore to save the cargo. None of the sugar was saved; nothing of the cargo was saved. There was not much confusion among the crew when the boat was struck.

THOMAS BROWN.

Sworn to and subscribed before me March 1, 1869.

K. LOEW,
U. S. Commissioner.

WILLIAM GREEN, sworn, says:

My age is forty-seven years; am a resident of this city, and my occupation engineer; was on board the Brown when the collision took place between her and the Teutonia. I believe it was on the 29th or 30th of December, 1868; am not positive as to date. It was a dark, rainy night, at about half past eleven. The night was very dark, on account of the rain. There was a moon, but covered with clouds. I saw both shores when we were out in the middle of the river. When the boats collided they were, as much as I could see, lying at right
15 angle. When we left the landing I heard the pilot blow two signals, for the New Orleans shore, or east shore. Four or five minutes afterwards I heard the same signal repeated by the Brown; about five minutes more the same signals were repeated a third time. Just at that time I heard the first whistle blown the first time by the other boat. Immediately after that signal our engine was stopped, and remained so till the boats collided. The Brown was going down stream. She was struck on the starboard bow, about ten or fifteen feet from the stem. I suppose the Brown was about one hundred yards from the New Orleans shore, perhaps not so much. Did not see the Teutonia before the collision—saw her only when she struck. I could not see her, on account of my position being in the engine-room. I suppose the Brown sunk about half an hour after the collision. The Brown was strong, staunch, well-manned, and provided at the time of the collision. Was on duty at the time of the accident. The Brown had the regulation-lights out, as required by the United States laws.

Cross-examination:

I should judge the Brown was about the middle of the river when she blew the first whistle. I suppose the collision took place about a minute or a minute and a half after the engines of the Brown were stopped.

WILLIAM GREEN.

Sworn and subscribed to before me March 1, 1869.

K. LOEW,
U. S. Commissioner.

16 W'M S. BASSET, recalled and cross-examined, says:

The collision took place in deep water. I made no statement in the newspapers about the collision. The statement that appeared was copied from a memorandum which was subscribed by me. It was made by me that the community might know the circumstances of the collision. The memorandum was made on the Alloe by the clerk of the Brown. I signed it, and it was hung on the manifest-board of the steamer Alloe. I had already entered a protest at Point a la Hache.

W. S. BASSETT.

Sworn to and subscribed before me March 1, 1869.

K. LOEW,
U. S. Commissioner.

17 *Testimony of William S. Bassett.*

SEWARD & KIP
vs.
STEAMSHIP TEUTONIA.

Testimony for libellants, taken January 25, 1869, in presence of proctors for both parties.

W'M S. BASSETT, being duly sworn, says:

Am thirty-six years of age, and reside in this city; was captain of the steamer A. G. Brown at the time she collided with the Teutonia.

We started from the plantation of Bradish Johnson towards the other side of the river. We rounded down, straightening down the river, on the east shore. A steamship, which was afterwards ascertained to be the Teutonia, was coming up the river from the other or west shore. That steamship blew two whistles, which signal meant that she was coming up for the larboard shore of the river, on the left hand side coming up. We answered by two whistles, as we were then on the east shore, giving her the side she wanted. Shortly after this signal was exchanged between the Brown and steamship, said steamship blew one whistle, which indicated that she wanted the starboard shore, on the right-hand side coming up. We answered back with two whistles, as we were then on the east bank, and she would have to cross the river if she wanted to pass us on the starboard side. After answering the second time two whistles, she blew one whistle again. We
18 answered back by two whistles, as we were close to the eastern shore, and stopped our engines, ready for backing. At that time the Teutonia had crossed from the western to the eastern shore. We were stopped, and were backing, when I first discovered the Teutonia was coming on us. I hallo'ed to them to stop and back their vesse', or they would run into us. They took no notice of my warning, and proceeded on, coming on us. At that time we were backing the Brown. The Teutonia did not stop even after the collision. As far as I could see, she was under headway all the time. The Brown had the proper signal-lights out. The Teutonia struck the Brown right for'ard of the *stem* [steps.] She stove in on that side, on the starboard side. After that I ordered the Brown right ashore; made shore in about ten minutes, and after the passengers and baggage were landed the Brown careened over and sunk. We put a line ashore to fasten her, but the water was filling up so rapidly that we had no time to fasten her before the boat sunk. After striking us the Teutonia went right ahead, and I never saw her after that. She passed by us like a streak, and I saw her no more on that night. This happened about eleven o'clock on the night of the 30th of December last past. It was not foggy at the time, but it had been up to about nine o'clock, when the weather cleared up and became hazy and rainy; not much of a rain, a misty rain; a strong breeze blowing at the time. Both shores could be plainly seen. Saw but one light on the steamship. It was the only signal-light that I could discover. It was at the mast's head. She had no American signal-lights. In the position in which she was when I last saw her
19 I would have seen her red light on the port side had it been out.

As far as I could judge, the Teutonia went right up the river after striking us. The Brown was ran ashore as soon as she was struck, and I saw no more of her (the Teutonia) that night, after she struck us.

Cross-examination:

Had no interest in the A. G. Brown, as owner; was only interested in her as charterer. Was on the promenade-deck, right for'ard, near the jackstaff, at the time of the collision. When I first saw the Teutonia I suppose she was about thirty yards from us. She was then coming quartering across the river. She was steering for the starboard shore. We were then heading down the river. We were straightening down by the east shore. The Brown could not be more than sixty yards from the shore, the east shore. The plantation of Bradish Johnson was on the opposite shore. I suppose the Brown was parallel with the shore. Cannot tell how far the Teutonia was from the east shore, when I first saw her. I suppose she was about thirty yards. When I heard the first whistle of the Teutonia she was not visible. The collision must have happened about twenty-five minutes after the first signal was given by the Teutonia. The collision occurred about two or three minutes—not five minutes anyhow—after the Teutonia hove in sight. The engines of the Brown were backing before I saw the Teutonia. She was backing with all her power when she was struck. Do not know what was the position of the helm of the Brown at the time she was struck; was not in the pilot-house. There is not much difference how the helm of a side-wheel boat stands when she is backing. The Brown was struck on the starboard side, just for'ard of the stem. She was between the left bank and the east shore when she was struck by the Teutonia.

The deepest water near the point where the collision took place is in the middle of the river, and near the eastern shore it is shallow water. It would be necessary, at that particular point, to go about two hundred feet from the eastern shore to find twenty feet of water. The Teutonia was about thirty yards from us when I called on her to stop and back her engines, or she would run into us. I heard no orders given to stop or back her. I could see her outline when I thus called on her; could see that it was a big ship. Could see the shore plainly, that is, eastern shore, which, though flat there, is full of timbers all along, and I could see them distinctly.

The Brown had a red light on her port-side chimney, and a green one on her starboard chimney; no other lights, except the cabin and deck lights. There was a watchman below, and myself on deck. The Brown was stopped before I saw the Teutonia.

Question. Why was the Brown stopped before you saw the Teutonia?

Answer. Because the Teutonia first blew two whistles, which we answered back with two. She next blew one whistle, which was a counter-signal to the first one. We blew two whistles again, and then stopped.

Cannot tell how long it was between the time when the Brown was stopped and the time that her engines were backed. I only saw one light on the Teutonia—at the masthead. It was not a large light. I could only see a glimmer. I knew the Teutonia was coming into us when I first saw her. I kept my position on the promenade-deck till after the Teutonia passed us. My attention from the time I first saw the Teutonia to the time of the collision, was occupied solely in calling to the Teutonia to back, as she was coming into our boat. I did not observe at that time, not until the Teutonia was passing, whether or

not she had proper lights. Had she had them I would have seen them. She had no red light. Immediately after the collision I went down below, to ascertain what damage had been sustained; went down immediately after she cleared, about three minutes after she struck us. The Teutonia was by the side of the Brown when my attention was drawn to the matter of her lights. The promenade-deck of the Brown was about fifteen feet above the level of the water. Do not recollect the tonnage of the Brown. Do not know what the custom-house measurement of the Brown was, but I know that she carried two hundred and fifty tons. The Brown was built in 1858 or 1859; as good as a new boat. She was only partially insured, for $3,000, and she was considered by the insurance companies as a No. 1 boat of her class. About two or three minutes after the collision the Teutonia disappeared. I saw no more of her after that. When the steamship struck the Brown I was alarmed for the safety of my boat, the force of the blow justifying that impression, and I immediately went below to ascertain the extent of the
22 damage, and found her in a sinking condition. The two whistles of the Teutonia meant that she was making for the larboard side going up, and my answer of two whistles meant that she could have the larboard side. The next signal of one whistle meant that she wanted the starboard side. There were about three to five minutes between the first and second signal of the Teutonia. When the Teutonia blew the two whistles she was on the larboard shore. The river is about three-quarters of a mile wide at the place where the collision occurred. I consider that the Teutonia, being under full head of steam, could cross the river in ten minutes at the time of the collision. At the time of the collision the Brown was tight, staunch, well manned, and provided. The value of the Brown at the time of the collision, considering the trade she was in, and the business she had, was $15,000. She could not be replaced for that price. I tried to get another like her, and could not, for that price.

Recross-examination:

I had agreed to give $14,000 for the Brown on the 1st February, besides paying her docking and other repairs, amounting to $3,000. It was about twenty feet from the stern of the Brown to the point where she was struck by the Teutonia, and about one hundred and twenty feet from that point to her stern.

W'M S. BASSETT.

Sworn to and subscribed before me January 25, 1869.

K. LOEW,
Deputy Clerk and U. S. Commissioner.

23 *Testimony of Oliver Canton.*

SEWARD & KIPP
vs.
STEAMSHIP TEUTONIA.

Testimony for libellants, taken before Charles Claiborne, U. S. commissioner, February 18, 1870. Present, Whitaker & Rice and A. Voorhies for libellants, and E. W. Huntington for claimant.

OLIVER CANTON, Jr., sworn, says:

My occupation is steamboating; am now employed on the T. D. Hine; have been engaged in steamboating five or six years; have been on

the A. G. Brown. The last time I was on board of her was when she was sunk, somewh*at* about half past *seven* [eleven] o'clock at night.

The A. G. Brown had rounded out from the Woodland plantation, and was going down the river to Magnolia plantation for the purpose of laying up for the night. In the neighborhood of Farmer's rice-mill the A. G. Brown blew three long whistles, the customary signal to announce to planters on shore that the boat was passing. A few minutes afterwards the whistle of a steamer was heard, apparently from the opposite side of the river. I believe the approaching vessel gave two whistles, which were answered to by the steamer A. G. Brown by two whistles also. The signals of the A. G. Brown were repeated two or three times. During the time that the boats were signalizing each other, the Teutonia must have crossed the river on the side the Brown was
24 descending. As the boats came together some ten or twelve minutes after the signals were given, the Brown being still on the side of the river she blew for, I think that the whistle of the Teutonia must have been changed; would not swear positively as to that. The A. G. Brown was struck on the starboard side, about fifteen or twenty feet aft the stem; was standing in the cabin at the time of the occur'ence, and was thrown from starboard to port by reason of the collision. I immediately went outside on the promenade deck; saw the outlines of the Teutonia as she passed up. There were no lights visible on her at the time. After the occur'ence took place the A. G. Brown was headed to the shore, lines gotten out, and made fast. The rush of water was so great that the boat's bitts were dragged out, and the boat floated down and careened over. She floated down the river about twenty miles below the point where she first careened; so we heard from planters living there. I can swear that the wreck is still there. When the Brown first rounded out she came within one hundred or one hundred and fifty or two hundred yards from the opposite side, and then straightened down the river. The first whistle from the Teutonia was blown about fifteen minutes before the occurrence took place. At the time I heard that first whistle we had already straightened down the river. We were then on the Point à la Hache side, the left bank of the river. The sound of the approaching vessel came apparently from the opposite shore, which would be our starboard side. To the best of my belief, the Brown was nearest the shore at the time of the occurrence; am familiar with the windings of the river at that point.

25 (Being shown diagram, now marked 9, says:) It's an accurate diagram of the course of the river, to the best of my judgment, except I think the bend of the river at Magnolia is a little too sharp. I think also that said diagram illustrates the respective position of the two boats at the time of the collision, letter "C" standing for Teutonia, and "B" for A. G. Brown. From the diagram it appears the boats were both struck on the starboard side. The different points designated on the diagram are, I think, correctly set forth.

There is about four miles' distance between Magnolia and Woodland. Loussades is about middle way between the two.

Farmer's rice-mill is about one-quarter or one-half mile below Woodland, on the opposite side of the river. The night was dark, with a light, drizzling rain; no moon visible. We could see the outline of the shore when we came straight down the river.

Cross examination:

The river is about three-quarters of a mile or a mile in width at Farmer's rice-mill. When it was apprehended that a collision would hap-

pen, a few minutes before said collision I heard the bells ring on the Brown to stop the engines, which signal to stop the engines was immediately obeyed. The boat was backing when the collision took place. When I went out of the cabin after the collision I saw Captain Basset standing on the roof. He was commanding the boat. That was his proper position. As soon as the boat was headed to the shore, he went down stairs to see what was the matter with her. I will state that
26 I heard Captain Basset give the order to put the boat in to the bank. The first thing that I did when I went on the promenade deck was to see what was the matter, and my attention was partially directed to the passing of the Teutonia. This did not engage my attention more than a minute or two. I believed then that the boat was hurt, but did not believe, but a few moments afterwards, that she was in a sinking condition.

Question. Did you think it necessary to look at the Teutonia at that time in order to discover what had happened to the Brown?

Answer. No; I did not think it necessary.

Was talking to a gentleman in the cabin at the time of the whistle of the Teutonia. The signals referred to in my direct examination were given while I was engaged in that conversation.

Redirect:

The reason I will swear that the wreck is still at Pleasant's Point is, that I passed there once after the collision, and was shown the place by a pilot.

There were a number of empty barrels taken out of the boat's hold, belonging to Dr. Wilkinson, since she is at that point.

O. CANTON, JR.

Sworn to and subscribed before me February 18, 1870.

CHA'S CLAIBORNE,
U. S. Commissioner.

27 *Testimony of Gerhard Busing.*

SEWARD & KIPP
vs.
STEAMSHIP TEUTONIA.

Testimony taken before K. Loew, U. S. commissioner, December 21, 1870. Present, Whitaker & Rice for libellants; E. W. Huntington for claimants.

GERHARD BUSING, sworn for libellants, says:

I am at present the manager of the Good Intent Dry-dock Company. In 1868 I was the foreman of the company.

I know the steamer A. G. Brown. She was docked and repaired at the Good Intent Dry-dock. Don't know exactly the time she was repaired, but if I should see the bill I could say when.

(Being shown the bill X, says:) The Brown was repaired in November, 1867, as stated in said bill. The actual costs of these repairs was $7,154; a deduction of $564 was allowed after the loss of the Brown. This bill simply includes the wood-work and repairs. Besides the wood-work, the boilers and the brick-work, and both engines, were also repaired; also both chimneys. The whole boat was entirely repainted, the cabin as well as the hull.

Although this work is entirely out of my line, I judge that the repairs just now mentioned were worth at least $5,000.

I consider that the A. G. Brown, at the time she was lost, was worth from fourteen to fifteen thousand dollars, taking in consideration
28 the business she was engaged in and her actual value. Ever since 1853 I have been engaged in repairing vessels. It is within my own personal knowledge that the repairs stated in bill X were made at the time stated.

Libellants offer bill X.

Cross-examination:

The Brown lay part of the time in the dock, and part of the time out of the dock, at the time the repairs not mentioned in the bill were made. I saw all the wood-work done on the Brown. I saw the brick-work and the repairs of the chimneys, boiler, etc., done at the same time the wood-work was done.

(Being asked upon what he bases his judgment as to the value of the repairs on the boilers, engines, chimneys, and brick-work, says:) There was a crowd of men engaged on the Brown in that work for nearly three months. This is the only fact upon which the judgment is based. I saw the Brown after she had been repaired and had left the dock. She was engaged in the lower-coast trade, and saw her on her arrival in port; saw her most every trip; went to see if she wanted any other work, as well as any other vessel in port. It was my business as manager to look out for work. The Brown at the time of her loss was engaged in the lower-coast trade.

(Being asked what was the value of the business of the Brown at that time, says:) I saw her arrive with full loads, which made me believe she would clear $1,000 a week, free of all expenses. This is the only fact upon which I base my belief as to the value of her business.
29 I never ran a steamboat as owner, neither have I acted as master or clerk of a steamboat; don't remember having had a conversation with the owners of the Brown in regard to profits of trade. Probably, I may have heard the owners say that the Brown was in a profitable business, and that they were in debt, and believed they could pay the same by the profits from the Brown.

Re-examined:

I noticed the condition of the Brown before the brick-work and the other repairs of the chimneys and boilers were made.

Question. What was her condition?

Says: "I can't say as I did not overhaul her."

GERHARD BUSING.

Sworn to and subscribed before me this 21st December, 1870.

K. LOEW.
U. S. Commissioner.

BILL X.

NEW ORLEANS, *November* 17, 1867.

St'r A. G. Brown to the Good Intent Dry-dock Co.

To entrance fees		$100 00
7 laying days, at $10		70 00
48 days' foreman, 6.50		312 00
581 " carpentering, 5.50		3,195 50
70 " apprentice No. 1, 3.50		276 50
49 " " No. 2, 1.50		73 50

16¼	" caulking foreman, 5.00	81 00
83	" " " 4.50	373 50
		$4,482 25

30	Amount brought forward	$4,482 25
To	6,168 feet oak lumber, 07	431 76
	13,580 feet pine lumber, 05	679 00
	1,900 running feet sawing lumber, 03	57 00
	2,160 feet cypress lumber, 07	151 20
	617 feet dress. cypress, 07	43 19
	7,118 feet dress. 2-inch decking, 06	427 08
	600 feet rough 2-inch decking, 05	30 00
	1,008 feet dress. 1½-inch decking, 06	60 48
	850 lbs. wrought spikes, 13	110 50
	850 lbs. cut spikes, 10	85 00
	100 lbs. finished nails, 25	25 00
	2 packs pump-tacks, 15	30
	48 sheets tarred felt, 60	28 80
	120 feet white pine, 07	8 40
	2 6-in. white-oak knees	12 00
	600 lbs. cut nails, 10	60 00
	468 lbs. spun oakum, 18	84 24
	10 lbs. candles, 30	3 00
	4 bbls. pitch, 6.00	24 00
	4 pitch-mops, 1.25	5 00
	187 lbs. white lead, 15	28 05
	4 seam-brushes, 50	2 00
	300 oak wedges, 10	30 00
	10 lbs. tarred rope, 25	2 50
	4 lbs. wrought nails, 25	1 25
	2½ galls. paint oil, 1.75	4 37½
	221 lbs. rivet and blunt bolts, 25	39 78
	1 key for capstan	50
	31 welds on tie-bolts, 50	15 50
	15 lbs. screw-bolts, 25	3 75
	7 welds on screw-bolts, 25	1 75
	130 lbs. slide-bolts, 18	23 40
	1 capstan-bolt, 50	50
		$6,961 55½

31	Amount brought forward	$6,961 55½
To	44 keys, 10	4 40
	39 lbs. tie-bolts, boiler deck, 18	7 02
	4 lbs. welding "	1 00
	189 lbs. hog-chains 16,	34 02
	12 lbs. screw-bolts for the guard, 50	6 00
	27 lbs. covel straps, 25	6 75
	4 welds on guard-chain	1 00
	Altering " "	6 00
	90 lbs. hog-chain, 18	16 20
	4 ring-bolts, 50	2 00
	2 swivels, 2.00	4 00
	Overhauling stirrups	5 00
	4 ½-inch screw-bolts	80

5 lbs. capstan-plates, 18	90
Rep'g 1 hog-chain strap	3 00
Altering hog-chain on roof	1 00
31 lbs. washers, 18	5 58
4 screw-ends and weld. the same	2 00
25 lbs. screw-bolts, 25	6 25
Welding 3 tie-bolts, 50	1 50
" 1 screw-bolt	25
174 lbs. screw-ends, 18	31 32
58 key-ends, 18	10 44
27 welds on tie-bolts, 50	13 50
64 lbs. tie-bolts, 18	11 52
Repairing circle-bolts	2 00
36 lbs. guard-chain straps 25	9 00
	7,154 00½
Deduction	654 00½
	$6,500 00

A true copy.

HERMAN SCHROEDER,
Secretary.

32 J. M. PETERSON, sworn for libellants, says:

Have been interested in tug-boats on the river for the last seven years. Have seen the A. G. Brown; made a trip on her; can't say how long before the loss of the Brown that I made a trip. In 1868 I had no boat in the lower-coast trade. Since the fall of 1868 I have been in that trade. I have run a boat all the last summer in the lower-coast trade, and have lost money. A boat may lose money during the summer, but they expect to regain in the winter what they lose in the summer. I should not think that the Brown would have been worth less than fifteen to eighteen thousand dollars, from the business she was in, and the profits she could have made, and from the prospects the owners had, as the season had arrived for large freights. We consider the season for large, heavy freight, up and down, to be from November to March. My boat, the Bradish Johnson, is in that trade, and now arrives every time with a large load.

Cross-examination:

My knowledge with regard to what the Brown could have earned is derived solely from the receipts of my own boat, and from my knowledge of the coast-trade itself. I never would have put the Bradish Johnson in that trade had I not believed to make money by it. The profits of a boat depend, in a manner, upon the management of the officers and owners, her capacity, speed, etc., skill and popularity of the manager, master, clerk, etc.

Can't say whether I made or lost money by the Murtie. I believe the boat made $2,800 whilst she was engaged in that trade, for about six or seven months.

33 I have now the Bradish Johnson in that trade since January, 1869. She remained in the lower-coast trade about six weeks; went into the Red River trade, and is now again in the lower-coast trade. In these six weeks she made over $2,000. About $2,100 in the lower-coast trade. The B. J. cost me $53,000, and a little over. She is a larger boat than the Brown. Her carrying capacity is much greater than that of the Brown. Don't know the age of the A. G. Brown.

Re-examined:

I did business with the Murtie in the summer and fall. I am my own insurer. Had no insurance on the Murtie, but have now on the Bradish Johnson. Don't think I could have gotten an insurance on the Murtie. I know I could not. Below Point à la Hache there is generally stormy weather.

J. M. PETERSON.

Sworn and subscribed to before me this 21st December, 1870.

K. LOEW,
U. S. Commissioner.

Captain WOODS, sworn for libellants, says:

34 I am a steamboat master, and have been connected with the lower-coast trade since 1863; commanded the Aloe in 1868; knew the A. G. Brown while she ran in the lower-coast trade in 1868.

Considering the repairs that had been put on the Brown, and the business she could have done during the season, which was a good one, the Brown would have been cheap at $12,000.

The Aloe made from 1st November, 1868, to 25th January, 1869, in the lower-coast trade, between twelve and thirteen thousand dollars net profits. She was of about the same carrying capacity as the Brown.

Cross-examination:

The time mentioned by me was the greatest and most profitable time of the season; I mean from November to January. I have made as high as $800 in a month profit in the summer time; but last summer I lost money in that trade, on account of not having a proper boat to run.

Considering the repairs put on the Brown, I judge she was worth some 12,000, but when I consider the profits she would have made during the season, she would have been worth a good deal more. The success of a boat depends upon the popularity of her officers.

V. J. WOOD.

Sworn and subscribed to before me this 21st December, 1870.

K. LOEW,
U. S. Commissioner.

35 HERMAN SCHROEDER, sworn for libellants, says:

I am secretary of the Good Intent Dry-dock Company from the beginning of the company; was so in November, 1867. Bill X is in my own hand. It is for the wood-work—for the repairs on the wood work—on the Brown. These repairs were made at the date stated in the bill. The repairs were furnished at the date of the bill. The work was done as set forth in the bill, and the prices were charged and paid, as stated by the owners of the boat.

At the same time the carpenter's work was done, the repairs on the engines and boilers was also made. She was also painted and completely fitted out, and in perfect condition to run. I know nothing of the repairs except the wood-work.

HERMAN SCHROEDER.

Sworn to and subscribed before me this 21st December, 1870.

K. LOEW,
U. S. Commissioner.

36 *Testimony of Cha's Armstrong.*

SEWARD & KIP
vs.
STEAMSHIP TEUTONIA.

Testimony for libellants, taken before K. Loew, U. S. commissioner, March 3, 1870. Present, Whitaker & Rice and A. Voorhies for libellants, and E. W. Huntington for claimant.

CHARLES ARMSTRONG, being first duly sworn, deposes and says:

Was second pilot on the steamer A. G. Brown some time in December, 1868; had been on her ever since she has been running, except a few months; was on board of her at the time of collision with Teutonia, which took place about 11½ p. m., after leaving Bradish Johnson's plantation.

After the Brown had headed down stream on the west shore, or Algiers shore, I saw a light which I thought came from a steamship or tow-boat. I blew one whistle, to which I had answer of two from the Teutonia, which was for the Brown to take the east shore, which she did. In losing sight of the west shore, the Teutonia blew one whistle for the Brown to go back to the west shore, which she did not do. Then we answered back two whistles, to which she did not answer, so we stopped the A. G. Brown. I suppose it was about five or six minutes after we had stopped the Brown that the Teutonia came into her,
37 striking the Brown on the starboard bow, and striking the steamer Teutonia about midship on her port side. After striking the Brown the Teutonia never slackened, but kept on, causing the Brown to sink about twenty minutes after the collision.

(Being shown Diagram 9, says:) Farmer's mill ought to be lower down on the east shore than it is located on the diagram 9. Woodland, as near as I can tell, is properly located. There was a Morgan steamer lying at anchor above Woodland at the time the Brown rounded. The Morgan steamer was lying just above the wharf at Woodland, a couple of acres above or thereabout. We saw her from the time we rounded to from the wharf. After leaving Woodland on the west shore, we rounded to and kept on the west shore. After we had rounded to down stream, on the west shore, I told Mr. Eugene Darabe that I thought I saw something of a light—whether a light or not I could not tell—to which he told me to blow one whistle, which I did. Some unknown steamer which answered back two whistles, which were for the A. G. Brown to keep the east shore, that is, to cross to the city side of the river; and after we took the east shore she began to blow one whistle, to which we answered back two, and then we blowed a whistle—two again—to which we had no answer, and immediately we stopped the steamer A. G. Brown, and five or six minutes after stopping her we were struck by the Teutonia. We were not moving at the time we were struck, but we were not backing, because we had no time to do it. At the time we were struck by the Teutonia we were quartering towards
38 the east shore, head up stream. That was the way the Teutonia struck her on the starboard bow. There was actually no tow at the place located on plan 9. The vessel laying there was the Morgan steamer mentioned above. There was actually a tow lying about twelve miles below Point à la Hache. Diagram 9 gives the general large outlines of the river correctly, without counting the points putting into the river. The positions of the Brown and Teutonia as represented on

Diagram 9 is not correct, as the Teutonia passed between the Brown and the east shore. That's the only difference I make. After the Teutonia struck the Brown she proceeded on up the east shore. The red and blue lines on Diagram 9 indicate the position of the Brown and Teutonia.

At the time of the collision it was very foggy and misty, and there was a heavy rain. The only shore that was visible going down was the west shore, which shore the Teutonia ought to have kept, because it was visible a considerable distance out, and because the river on that shore is more straight.

Cross-examination:

Cannot state what distance the Brown was from the east shore at the time of the collision. The reason why I can't tell was because it was so foggy that I could not see the shore. The Teutonia was from fifty to sixty yards from the Brown when I first saw her.

39 (Being asked when the danger of a collision became apparent what was done on the Brown, says:) We could do nothing, because we could not know whether the Teutonia would put her helm to starboard or port.

Question. How far was the Teutonia from the Brown when the Brown was stopped?

Answer. We did not see the Teutonia when we stopped the Brown. The Brown had been stopped between six and seven minutes when the accident took place.

The collision caused the Brown to make right up for the east or New Orleans shore. Both Mr. Darabe and myself were at the wheel of the Brown when the collision happened. At the time of the collision the Brown was on her way to Magnolia, which is below Woodland. That night we had been to Mr. Lawrence's plantation.

(Being asked for what purpose the Brown was going to Mr. Lawrence's plantation, says:) To take some molasses for the city, which would not be ready till morning. (Being asked why did the Brown go from Johnson's to Lawrence's plantation this night, says:) To lay there until the following morning.

This collision was investigated by the United States board of inspect ors of pilots; don't know for what purpose.

40 Redirect:

The Teutonia could have avoided the collision.

Question. (Answer objected to.)

She could have avoided it by blowing three whistles, which would have been a signal for both boats to back. If the Teutonia had reversed her engines at the time I first saw her she would have avoided the collision. The Teutonia appeared to be under full headway at the time of collision.

Recross-examination:

The Teutonia, I think, run about three lengths after I first saw her before she struck the Brown.

CHARLES ARMSTRONG.

Sworn to and subscribed before me this 3d day of March, A. D. 1870.

K. LOEW,
U. S. Commissioner.

41 *Testimony of William H. Brown.*

SEWARD & KIPP
vs.
STEAMSHIP TEUTONIA.

Testimony for libellants, taken March 17, 1870. Present, Whitaker & Rice, proctors for libellants; E. W. Huntington for claimant.]

W'M H. BROWN, being first duly sworn, says:

Am forty-two years old; have been a seamen since I was eleven years, and never was in any other business; have been a ship-master since 1857; am now a submarine diver; have been on board the steamer A. G. Brown last on the 13th day of February, 1870, on the outside and in the hold of her, where she is, about sixty-five miles from the city of New Orleans. She lays with her bottom up, and her bow up toward the city of New Orleans about thirty or thirty-five feet under the surface of the water, and a total wreck. Have examined her sides; found on the starboard side, about twenty or twenty-five feet aft of the stem, nearly under the ash-pan, a hole, which, upon measurement, I found to be three feet two inches in length and four feet in depth; also on the port side, opposite the hole, I found planks started out—two or three planks, about six or eight feet fore and aft. They were started out to port. Was also on the stem of the boat, where I took a bell-rope and
42 measured the hole with. After that I brought the rope up in order to see what the measurement was. I measured to see, and found it corresponded with the statement I have already made. Am positive that this hole was on the starboard side. Have been engaged, off and on, about fifteen years in the business of diver, and for nine years consecutively, with the exception of eight months. Have been employed both by the former Southern Wrecking Company and the present wrecking company, which is called the "N. O. Wrecking and Salvage Company." Have been employed by E. A. Yorke, president of the wrecking association, and by Mr. Spencer Field, the former president of the wrecking association. The hole appeared as if some heavy body had struck her on the starboard side, as the planks were started in on that side and out on her port side.

Cross-examination:

Was employed by Mr. Sieward to inspect the wreck. I received $100 as a compensation for my services. Can't tell how long I was beneath the surface of the water. No sediment or mud around the wreck, nothing else but sand. Her wreck was not much imbedded in the sand. Her machinery was imbedded, but the hull was not. Did not see the machinery; did it by feeling. I ascertained by my head and hands that her bottom was up. I ascertained the length and
43 width of the hole with a life-line, which was attached to me. I made the line fast to the stern, and then went along the side of the vessel with the line to the hole. The hole went clear through the side into the hull of the vessel. Did not measure the breadth on the port side particularly. I extended my arms and measured it that way. There is a hole on the port side where the planks were started out, (five planks,) and the planks remaining over the hole yet. Am positive that the wreck was bottom upwards. The wreck laid right square on her bottom. The bottom at that point of the river is very level, sandy bottom.

Re direct:

The appearance of the hole on the port side could not have been produced by a blow on the port side, because the planks were started out on that side.

When I went down there as diver I received no instructions. The only instructions I received was to go there and ascertain on which side the hole was. Mr. Seward gave me these instructions. We have various fees for our services, from one hundred to five hundred dollars. My fee in this case has been paid, that is, my entire fee; have no more interest in the matter. Was paid fifty dollars on account, and on my reporting that I had examined the wreck I was paid fifty dollars more as agreed upon.

44 Recross-examination:

The side on which I discovered this hole lays towards the right shore going down.

W. H. BROWN,
Submarine Diver.

Sworn to and subscribed before me March 17, 1870.
CH'S CLAIBORNE, *Clerk.*

TESTIMONY FOR CLAIMANTS.

Testimony of William Nelson.

SEWARD & KIPP
vs.
STEAMSHIP TEUTONIA.

Testimony for claimant, taken before K. Loew, U. S. commissioner, January, 8, 1869, in presence of all parties interested.

WILLIAM NELSON, being duly sworn, says:

I reside in the third district of this city; am a pilot by occupation; am a liscensed pilot, licensed by the United States. I will produce my commission whenever called for. Was on board the Teutonia when she collided with steamer A. G. Brown. The collision took place on Wednesday night, 30th December, 1868, at forty-five minutes past eleven p. m., forty-six miles below the Point à la Hache settlement.

I had charge of the Teutonia at the time of the collision; went on board of her outside of the bar; took charge of her at the pilot's station, for the purpose of bringing her up to this port; went right up to the boarding-station and stopped the ship. A boarding-officer came on board. After that was done we proceeded the quarantine-station. It was blowing very strong and raining very hard, and foggy, when
46 we anchored at the quarantine-station at about fifteen minutes to nine p. m.

We left that place at about ten minutes to ten p. m., and proceeded up the river, with clear weather. Got up to Point à la Hache settlement It then became foggy. I went on the foretopsail *guard* [yard;] heard a steamboat blowing three whistles, the customary shore-signal. I gave order to go slow, and blew one whistle for starboard shore, or east bank of the river. No answer was returned. Then I blew attention-whistle, meaning "look out for yourself;" no answer again. I then blew a long whistle for starboard shore, and repeated it two or three times; no answer at all.

After I had repeated this long whistle, I gave orders to stop the steamship engines, and to keep the ship steady northwest-half-west,

which was done. I then discovered a steamboat with green and red lights on the port bow. two points by the compass. I ordered the wheel hard to port, which was immediately executed, and the steamboat struck the steamship on the port side, one hundred and fifteen feet to the aft of the stem. I heard the order on board of the steamboat to back her, and then she was alongside, head down stream. She got out of my sight, and I ordered the steamship to go ahead slow, and put the wheel hard a-starboard, and to keep N. W. by W. ½ W.; and I discovered on the right bank or east shore what seemed to be a steamboat lying to an anchor. Orders were then given to stop the Teutonia and go to anchor. It was then about twelve o'clock. We then examined
47 our ship to ascertain what damage had been done. We there remained at anchor till three a. m. of the morning of the thirty-first. At three o'clock we hove up anchor and proceeded to the city, where we arrived on the same day.

There were lights on the Teutonia when I heard the three whistles of the steamboat. There was a white light at the masthead. It was a very large, bright light in a lantern; the lantern was probably more than two feet in diameter; also a red light on her port side and a green light on the starboard side. These lights could be seen at probably two hundred feet. On that night of the collision, the fog was dense. I suppose the Brown was about two hundred and fifty feet from the Teutonia when I heard the three whistles blown by her. The first whistle of the Teutonia was given about twenty minutes before the Brown struck her; saw nothing of the Brown after the collision, the fog being so dense that I could see nothing at a ship's length. The Brown disappeared immediately.

Question. Suppose the Brown had obeyed the signals of the Teutonia, would the collision have been prevented?

(Objected to by proctors for libellants, on the ground that it is a matter of opinion and not of fact.)

Answer. Yes; it would have been prevented.

The master and second officer of the Teutonia were on the bridge at the time of the collision. There was a watch on deck, one officer on the quarter-deck, two men on the forecastle to look out; don't know
48 how many quartermasters were at the wheel. The only men that I saw were the master and second officer. A strong breeze was blowing from south-southeast at the time the collision happened.

(Being asked whether all the usual precautions were taken by the Teutonia to prevent the collision—

Question objected to, on the ground that it is a leading question, and besides involves matters of opinion—

Witness says:) All the usual precautions were taken on board the Teutonia to prevent the collision.

The whistles of the Teutonia could have been heard at about two miles on a night like that. They were loud and distinct whistles. Have been a licensed pilot in active service for nine years.

The Brown was two points on my port bow by the compass when I saw her lights.

(Being shown diagram marked A says that:) It indicates the position and course of the Teutonia on that occasion. It does not indicate the position of the A. G. Brown at time I saw her lights. No. 4 on diagram, I think, indicates the position of the Brown at the time I first saw her lights. The collision took place about three minutes after I saw

her lights. Had the helm of the Brown been put to port at the time I saw her lights she would have cleared the Teutonia. I heard no orders given on the Brown except the order to back her, which was given just about the time she struck the Teutonia; saw nothing of the Brown after I came to an anchor. The Teutonia at the time of the collision was in the usual tract of steamers ascending the river. After the col-
49 lision the Teutonia went directly to the opposite shore, at Johnson's or Woodland plantation, and came to an anchor. It took about four or five minutes to go there. We went to an anchor on account of the fog, rain, and blowing, and also to ascertain the damage done to the ship. It is not usual for a steamship to go up the river on such a night as that on which the collision occurred. I was caught in a fog, and was trying to make a shore to my port side, to come to an anchor and remain there until the fog cleared up. I was justified by the condition of the weather in going as far up the river as I did on that night. As soon as I discovered that the fog was so thick, I gave orders to go slowly, and was looking for a proper place to anchor when the collision took place.

The weather was favorable to come up the river about twenty minutes before the collision happened. The vessels at the time of the collision, I think, were about two hundred feet from the *east* bank. That is the left bank coming up.

W'M NELSON.

Sworn and subscribed to before me this 8th January, 1869.

K. LOEW,
U. S. Commissioner.

J. MEYER, being duly sworn, says:

Am the master of the steamship Teutonia. I was on board when she collided with the A. G. Brown. The Teutonia was bound to this city from Hamburg and Havana.

50 It was on the night of the 30th December when coming up the river. The pilot was on the foretopsail-yard, the second officer and myself on the bridge, and two men for'ard on the lookout, and the third officer and quartermasters on the quarter-deck, and the whole starboard watch on deck. I heard three whistles blow. We answered by one whistle by order of the pilot, but no answer was given, and the pilot ordered three whistles. What that meant I do not know. Then we gave one very long whistle, which was repeated two or three times; all by order of the pilot. The steamer Teutonia was at that time going slow. A few minutes after that we saw a light two points on our port bow for'ard. We stopped the engines, and put the helm hard a-port. A short moment afterwards we were ran into from an unknown steamer, one hundred and fifty feet from the stem on our port side. I heard a voice on board the steamer giving orders to "back out," but it was too late. She ran into me and came alongside, head down stream. The pilot gave orders to go on slow, in quest of a good anchorage for the ship, and whilst at anchor to examine the ship to ascertain what damage she had suffered.

I did not hear or see anything of that strange vessel with my night glass. After the fog was cleared up, at three o'clock in the morning, we proceeded to the city, where we arrived at about eight o'clock on the morning of the thirty-first.

Before the collision it was so dark that I could see no shore. The order of the pilot to put the helm of the Teutonia hard to port had

51 the effect to bring the Teutonia nearer in to the left bank of the river. The orders given by the pilot were promptly executed. I corroborate the testimony of the pilot with regard to the lights on board the Teutonia. The whistles of the steamship were clear and distinct, as she had a good whistle which could be heard at a long distance.

The Teutonia is twenty-four hundred tons burden and iron hull. The weather that night was favorable for going up the river until that fog enveloped us. I saw some steamers going up with sailing vessels in tow

We met this fog about fifteen or twenty minutes before the collision. It arose suddenly. We were looking for an anchorage at the time the collision occurred, and just before the collision we concluded to come to an anchor on account of the thickness of the fog. Had the helm of the Brown been put hard to port at the time her lights were discovered, she would have cleared the Teutonia a long distance.

The diagram marked "A" illustrates very well the respective positions of the Teutonia just before and after the collision. Figure "4" was the position of the Brown as indicated by the light, but I do not know about her course, as I could not see her.

Protest now filed and marked B was subscribed by me.

JOACHIM MEYER,
Captain.

Sworn to and subscribed before me January 8, 1869.

K. LOEW,
U. S. Commissioner.

52 HENRY PALM, being sworn, says:

I was the engineer of the Teutonia at the time of the collision; was second engineer; was in charge of the engines of the Teutonia at the time of the collision. The machine of the Teutonia was stopped before the collision. The steamship was going very slow before the engines were stopped. The orders given were immediately obeyed by me. I was on watch at the time.

H. PALM.

Sworn to and subscribed before me January 8, 1869.

K. LOEW,
U. S. Commissioner.

NICHOLAS SAHLING, being sworn, says:

Am one of the crew of the Teutonia, and was on the lookout for'ard at the time of the collision; was on the forecastle for'ard. I have signed the protest marked B. I corroborate the testimony of Captain J. Meyer.

N. SAHLING.

Sworn to and subscribed before me January 8, 1869.

K. LOEW,
U. S. Commissioner.

I. G. GRONERMAN, sworn, says:

Myself and the other lookout kept a sharp look out. I have
53 heard the testimony of Captain Meyer, and know the facts stated by him are true and correctly stated, as well as the testimony of the pilot in regard to the lights and signals.

I. G. GRONERMAN.

Sworn to subscribed before me January 8, 1869.

K. LOEW,
U. S. Commissioner.

G. LUMICH, A. HEYD, C. EGGERS, and J. F. PREISS, being sworn, say:

That they were all on deck when the collision happened, and corroborate the statement of the captain of the Teutonia. J. F. Preiss says he is second officer, C. Eggers says he is third officer, G. Lumich that he is second boatswain, and A. Heyd that he is quartermaster, on the steamship Teutonia. We are all on the eve of leaving the State on a voyage to Europe.

J. F. PREISS, *Second Officer.*
C. EGGERS, *Third Officer.*
G. LUMICH, *Second Boatswain.*
A. HEYD, *Quartermaster.*

Sworn to and subscribed before me this 8th day of January, A. D' 1869.

K. LOEW,
U. S. Commissioner.

54, 55 SURVEYOR'S OFFICE, 58 CAMP STREET,
State of Louisiana, City of New Orleans:

The undersigned, inspectors forunder writers at New Orleans, and general marine and river surveyors for the inspection of vessels, steamers, and cargoes, by request of the agents of the steamship "Teutonia," have this day made survey of said ship, with reference to the collision with the steamer "A. G. Brown."

We learn from the master and officers of the ship that the collision took place on the night of the 30th December last, at about 11.45 o'clock. The night was dark and foggy, and the "Teutonia" in the reach above Point à la Hache, on the northern side of the river, when the collision took place.

After careful examination, we report as follows: The "Teutonia" appears, from marks on her larboard side, to have been struck by the "Brown" 115 feet abaft the stem, well up towards the plank-shear, and most likely with the corner of the wheel-house, as the marks of white paint left on the iron indicate, and a small eye-bolt which projected from the side of the ship is broken off. Besides, the hull or guardsof the "Brown" were not at most over four feet out of water when
56 light, and hence could not have struck the "Teutonia" so high up. Further forward one of the plates on the ship's side *if* marked as though it had been struck by the guards of the "Brown."

So that after a careful examination of the ship, and mature reflection upon the subject, we can arrive at no other conclusion that the "Brown" struck the "Teutonia" (with her head down stream) a glancing blow with her lower guards, and also with part of her upper works, probably the corner of her wheel-house, and passed astern of the "Teutonia." The marks of the collision on the ship are so far aft that is evident *that* she did not run into the "Brown," but that the "Brown" struck her as above stated.

Given under our hands, at the city of New Orleans, this fifth (5) day of January, eighteen hundred and sixty-nine, (1869.)

RICH'D L. ROBERTSON,
GUST. SCHNEIDAU,
ROB'T W. FOSTER,
S. B. FROST,
Marine Surveyors.
WILLIAM HANNON,
Master Carpenter.

57 United States district court.

SEWARD & KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

Evidence taken by consent, to be used on the trial of the above-entitled suit.

Captain L. W. COOPER, sworn on behalf of defendants, says:

I am a resident of New Orleans, and am river-inspector for New Orleans for the board of underwriters. I have acted in said capacity for nearly sixteen years. The steamboat A. G. Brown was repaired, under my supervision, in October, 1868. I valued said boat then at forty-five hundred dollars for insurance, and considered that a pretty high valuation. I always give the boats all the benefit of high valuation, as they are restricted to two-thirds of their valuation for insurance. At that time the Brown was insured for three thousand dollars, by the Union Mutual Insurance Company of New Orleans.

L. W. COOPER.

Jurat hereby waived.

A. & M. VOORHIES.

True copy of the original.
March 27, 1872.
(Signed) K. LOEW, *D'y Clk.*

58 UNITED STATES OF AMERICA:

United States circuit court, fifth circuit, and district of Louisiana.

SEWARD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 6689.

59 TRANSCRIPT FROM UNITED STATES DISTRICT COURT.—FILED MARCH 30TH, 1872.

Claim.—Filed January 6th, 1869.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

Now comes Joachim Meyer, the master of the steamship Teutonia, and the lawful bailee thereof for the owners, who are the Hamburg-American Steam Packet Company of Hamburg, and for and in behalf of said owners said master claims the said steamship, her boats, tackle, apparel, and furniture libeled herein.

Joachim Miller, being duly sworn, deposes and says that the Hamburg American Steam Packet Company are the true and bona fide owners of said steamship Teutonia, and that no other person is the owner thereof; and that deponent is the master of said steamship, and the lawful bailee thereof for the said Hamburg-American Steam Packet Company.

60 (Signed) JOACHIM MEYER, *Master.*

Sworn to and subscribed before me this 6th January, 1869.
(Signed) K. LOEW, *U. S. Com'r.*

Bond.—Filed January 7th, 1869.

UNITED STATES OF AMERICA,
District of Louisiana:

Know all men by these presents that we, J. Meyer, master and lawful bailee for the owners, claimants of the steamship Teutonia, as principal, and Edward Schinkel, as surety, are held and firmly bound unto Sieweerd and Kip, libellants, in the sum of eighteen thousand dollars, lawful money of the United States of America, for the payment whereof to the said libellants, heirs, executors, administrators, or assigns, we jointly and severally bind ourselves, our heirs, executors, and administrators firmly by these presents. Witness our respective names and seals, hereunto affixed by us, at New Orleans, this 7th day of January, one thousand eight hundred and sixty-nine.

61 Whereas an admiralty-warrant was lately issued out of the honorable the district court of the United States of America for the district of Louisiana, at the suit of Sieweerd & Kip vs. Steamship Teutonia, her tackle, apparel, and furniture, and numbered 9243 on the docket of the said court, commanding the marshal to seize and take into his possession the said ship, which has been seized accordingly, but has been released from said seizure and delivered to J. Meyer, the master and lawful bailee thereof, by reason of the signing, sealing, and delivery of these presents, said J. Meyer, master, having filed a claim thereto, which is now of record in the clerk's office of this court:

Now the condition of the above obligation is such, that if the said claimant and sureties abide by all the orders, interlocutory or final, of the court, and pay the said libellants the amount awarded by the final decree rendered in the court to which the process is returnable, or in any appellate court, then the foregoing obligation is to be void;

62 but otherwise shall remain in full force and virtue.

(Signed) J. MEYER, [L. S.]
Master of the Steamship Teutonia.
EDWARD SCHINKEL. [L. S.]

Signed, sealed, and delivered in the presence of—
(Signed) K. LOEW, *D'y Clk.*

Edward Schinkel, being sworn, says he resides in Algiers, opposite this city, and is worth the sum of eighteen thousand dollars in unincumbered real estate, over and above all his debts and liabilities.
(Signed) EDWARD SCHINKEL.

Sworn to and subscribed before me this 7th January, 1869.
(Signed) K. LOEW,
U. S. Com'r.

Note of evidence.—Filed April 28th, 1871.

SIEWERD AND KIP
vs.
ST'R TEUTONIA. } No. 9243.

The proctors read in evidence the testimony taken on behalf of their respective clients and the exhibits therein referred to.

63 *Hearing and evidence.—From minutes of Friday, April 28th, 1871.*

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

This cause came up for trial—A. Voorhies & J. S. Whitaker for libellants; E. W. Huntington for claimants—and after hearing the pleadings and evidence, the cause is continued till to-morrow for argument.

From minutes of Saturday, April 29th, 1871.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

This cause was resumed, and after hearing argument the court took time to advise.

Judgment.—From minutes of Friday, June 9th, 1871.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

64 For reasons orally assigned by the court, considering that the collision was the result of carelessness and negligence on the part of the steamship Teutonia—

It is ordered, adjudged, and decreed that the libellants do recover from the said steamship all damages suffered by the A. G. Brown in consequence of said collision.

It is further ordered that it be referred to J. W. Gurley, esq., special commissioner to ascertain the amount of such damages, and report to the court within the shortest possible delay the result of his examination.

Rule for a new trial.—Filed June 12th, 1871.

SIEWERD & KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243. U. S. district court.

On motion of E. W. Huntington, proctor for the claimants, in the above-entitled cause, it is ordered that libellants show cause on the 16th June, 1871, at 11 o'clock a. m., why the judgment herein rendered on the 9th instant should not be set aside and a new trial granted on the following grounds:

65 1st. The judgment is contrary to law and the evidence.

2d. It is proved that the A. G. Brown, at the time of the collision, was not in a proper position.

3rd. It is shown by the evidence in the record that the officers and crew of the Brown disregarded the signal of the Teutonia.

4th. The statement of the witnesses for the libellants is so contradictory that they are entitled to no credit.

5th. It is clear from the evidence that the disaster is solely attributable to those who were in charge of the Brown.

Order: New trial granted.—From minutes of Friday, June 16th, 1871.

SIEWERD & KIP *vs.* STEAMSHIP TEUTONIA. } No. 9243.

The rule taken by claimant on the 12th inst. came up—E. W. Huntington, for pl'tiff in rule; Whitaker and Voorhies for def'ts in rule—and after hearing argument it is ordered that the rule be
66 made absolute, the judgment rendered on the 9th inst. set aside, and that a new trial be granted.

Petition for a jury.—Filed June 22d, 1871.

A. H. SIEWERD AND A. P. KIP *vs.* STEAMSHIP TEUTONIA. } 9243. In admiralty.

To the honorable judge of the district court of the United States for the district of Louisiana:

The petition of Joachim Meyer, master and claimant of the said steamship Teutonia, respectfully represents that it is essential to the proper decision of this cause that the facts at issue, namely, by whose fault the collision was produced, be submitted to a jury of shipmasters for their opinion thereof, said opinion to have the force and effect only of an opinion given by the Trinity masters when consulted by the judge of the high court of admiralty in England.

67 Wherefore petitioner prays that said questions of fact be referred to a jury of shipmasters, and for such further orders as may be necessary in the premises.

(Signed) E. W. HUNTINGTON, *Proctor.*

Let the prayer of this petition be granted.
June 22d, 1871.
(Signed) E. H. DURELL, *Judge.*

Order of 22d June, 1871, *revoked.*

The court having further considered this petition—

It is ordered that the order herein made on the 22d June, 1871, be rescinded, and it is now ordered that two persons having experience both as masters and pilots be appointed to sit as assessors to the judge in this cause, one to be selected by the libellants, the other by claimants, who, after hearing evidence and arguments in the cause, shall give
68 their opinion to the court touching the matters in controversy, which said opinion shall not be conclusive, but shall have the force and effect only of an opinion given by the Trinity masters when consulted by the judge of the high court of admiralty in England.

December 15th, 1871.
(Signed) E. H. DURELL, *Judge.*

Marshal's return.—Dec'r 18th, 1871.

Received December 16th, 1871, and, on same day, served a copy of above order on E. W. Huntington, esq., proctor for claimants, in person.

New Orleans, December 18th, 1871.

(Signed) S. W. REED,
D'y U. S. Marshal.

Appointment of Joseph Dalferg.—From minutes of Monday, Dec'r 18th, 1871.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

In pursuance to the order herein made by the court, on 15th instant, J. S. Whitaker, esq'r, proctor for libellants, names Capt'n Joseph Dalferes to sit as assessor to the judge in this cause on behalf of said libellants.

69 SAME
vs.
SAME.

On motion of J. S. Whitaker, proctor for libellants, ordered that the cause be assigned for trial on Friday, 22d instant, at 11 a. m., and that claimants be notified thereof.

Appointment of Captain Edward Beals.—From minutes of Friday, December 22d, 1871.

E. W. Huntington, esq., this day named Captain Edward Beals to sit as assessor to the judge in this cause on the part of claimants.

Trial.—From minutes of Friday, December 22d, 1871.

SIEWERD & KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

This cause was called for trial—Whitaker and Voorhies for libellants; E. W. Huntington for claimants—when the assessors selected by
70 the parties having made appearance, the trial proceeded; and, after hearing the pleadings and the evidence in part, the cause is continued till to-morrow at 12 m.

Case resumed.—From minutes of Saturday, December 23d, 1871.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

This cause was resumed before the court and the assessors; and after hearing further evidence and argument, the court took time to advise, and instructed the assessors to furnish their opinion in writing touching the matters in controversy herein, on or before the 10th January, 1872.

Submission of opinion.—From minutes of Wednesday, January 10th, 1872.

SIEWERD & KIP
vs.
STEAMSHIP TEUTONIA. } 9243.

The assessors in this cause this day presented to the court their opinion in writing touching the subject-matter in controversy herein.

71 *Opinion of Captain Dalferes for libellants.—Filed January 10th, 1872.*

SIEWERD & KIP
vs.
STEAMSHIP TEUTONIA, } 9243. U. S. district court.

The undersigned, being called on by the court to give his opinion, after hearing the evidence in this case, and the argument of counsels, as to *to* which of the steamers was at fault in the collision by which the A. G. Brown was sunk, or whether both were at fault, desire' to report as follows:

1st. He considers it clear from the testimony that when the Brown left the plantation of Bradish Johnson, and rounded into the stream to descend the river, she gave three whistles as signals of her presence in that part of the river; that these signals were heard by the steamship Teutonia, and that thereafter, though giving repeated signals herself, she heard none from the Brown; and that, under such circum-
72 stances, instead of proceeding on her course, she should have stopped her engines, and waited until satisfied of the position of the descending boat, and that, in proceeding under such circumstances, she was in fault.

2d. That the course of the river at that point being considered, there was no necessity for the Teutonia to have crossed the river.

3rd. That the Teutonia was evidently proceeding under headway of steam and engine at the time of the collision, and that she was in fault in passing the Brown without delay or stoppage of her course, striking her on her st*eam*board bow.

That the A. G. Brown, evidently upon not understanding the signals of the Teutonia, as heard by her, did all she could to avoid the collision by stopping the engines, and otherwise doing such duty as was required of her, and that her pilots did all they could do, under the circumstances, to prevent the collision.

(Signed) JOSEPH DALFERES.

73 *Opinion of Edward Beals, assessor.—Filed January 10th, 1872.*

A. H. SIEWERD AND A. P. KIP
vs.
STEAMSHIP TEUTONIA. } 9243. U. S. district court.

To the honorable E. H. Durell, judge of the U. S. district court:

Upon the evidence in this case I am of the opinion that the Teutonia was not to blame.—

According to the diagrams of the two boats, and the position of the ship, and the distance she was from the right-hand bank ascending the river, when the collision took place.

According to the evidence of the witnesses of the Teutonia, when she heard the Brown's three whistles she gave the customary signals for the right-hand bank, ascending, and the engines were stopped, and her helm was put hard-a-port, all of which was done in accordance with the usages of the river in regard to the navigation of ascending and descending boats.

74 In opposition to their evidence we have the testimony of those in charge of the Brown at the time of the accident.

But the statement of these witnesses are confused and contradictory. Hence I have rejected the same in forming my opinion on the questions submitted for the decision of the assessors.

The rules of navigation which were offered in evidence when the collision happened, and are therefore not applicable to their case.

Respectfully submitted.

(Signed) EDWARD BEALS.

NEW ORLEANS, *January 9th*, 1872.

Judgment.—From minutes of Friday, January 12th, 1872.

SIEWERD & KIP
vs. } 9243.
STEAMSHIP TEUTONIA.

Upon due consideration of this cause and the opinions given by the assessors, the court is satisfied, for reasons orally assigned, that

75 the collision was caused by the carelessness and negligence of the Teutonia.

It is therefore ordered, adjudged, and decreed that, in favor of the libellants and against the steamship Teutonia, there be judgment for all damages suffered by the A. G. Brown by reason of said collision.

It is further ordered that it be referred to Commissioner Cohen to ascertain the amount of such damages, and report to the court speedily the result of his examination.

Order making heirs parties.—From minutes of Friday, the 19th day of January, 1872.

SIEWERD & KIP
vs. } No. 9243.
STEAMSHIP TEUTONIA.

Marshal's return.

On motion of A. and M. Voorhries and Whitaker and Rice, of counsel for libellants, and on suggesting to the court that since the date of the bond releasing the steamship Teutonia, seized in this case, Edward Schinkel, surety on said bond, is deceased, and that, under judg-

76 ment of the honorable the 2d district court for the parish of Orleans, his heirs have been put in possession of his estate, and that it is necessary that said heirs be made parties to this suit—

It is ordered by the court that Mrs. Felicite Shinkel, (born Angier,) widow in community of the late Edward Shinkel; Mrs. Marguerite M. Shinkel, wife of John H. Cordts; Mrs. Marie Elizabeth Shinkel, wife of Amadus Bryde, and represented by the said John H. Cordts; Mrs. Felicity Shinkel, wife of Henry I. Hauselmann; and Marius C. Shinkel, wife of Edward Miller, widow and heirs of the late Edward Shinkel, and now in possession of his estate, be made parties to this suit, and

that this order be duly served upon said heirs, or their legal representatives.

Marshal's return.

Received January 20th, 1872; on the 27th day of same month and year served all of the *following* named in the following manner by leaving the same with Henry J. Hauselmann, at 166 Common street in this city.

New Orleans, January 27th, 1872.

77 (Signed) S. W. REED.
D'y U. S. Marshal.

Report of M. M. Cohen, commissioner.—Filed Feb'y 28th, 1872.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } 9243.

U. S. district court, district of Louisiana.

The report of M. M. Cohen, commissioner, respectfully sheweth that on the 12th day of January, 1872, the following order was entered:

Upon due consideration of this cause, and the opinions given by the assessors, the court is satisfied, for reasons orally assigned, that the collission was caused by the carelessness and negligence of the Teutonia.

It is therefore ordered, adjudged, and decreed that in favor of libellants and against the steamship Teutonia, there be judgment for all damages suffered by the A. G. Brown, by reason of said collision.

It is further ordered that it be referred to Commissioner
78 Cohen to ascertain the amount of such damages, and report to the court speedily the result of his examination.

The commissioner further shows that as to the amount of such damages, the second article of the libel alleges that "said steamship came on with a *fine* head of steam, striking the said steamboat A. G. Brown on her starboard side, forward, staving her in and making a large hole in the hull, putting her at once in a sinking condition; that thereupon the steamer A. G. Brown was brought to shore and there made fast, but the water gained so fast that she careened over to the larboard side and became a total loss."

The second article of the answer of claimant (respondent) is, that "respondent, admitting the several matters alleged in the first article of said libel to be true, further alleges and propounds that the matters in the second, third, fourth, and fifth articles of said libel are in
79 great part falsely alleged and that the truth is as hereinafter particularly propounded."

And the seventh article of the answer is, "That respondent has no knowledge of the damage caused by the collision, but has been informed and believes that the same did not amount to the sum alleged in said libel."

In connection with these pleadings we notice that the testimony of W'm H. Brown, submarine diver, is: "Have been on board the steamer A. G. Brown last on the 13th day of February, '70, on the outside and in the hold of her, where she is, about sixty-five miles from the city of New Orleans. She lays with her bottom up, and her bow up towards the city, about 30 or 35 feet under the surface of the water, and a total wreck."

Basset, the captain of the Brown, testifies: "The Teutonia struck the Brown right forward of the stern. She stove in on that side, on the starboard side. After that I ordered the Brown right ashore; made shore in about ten minutes; and after the passengers and baggage were
80 landed the Brown careened over and sunk. We put a line ashore to fasten her before the boat sunk."

Oliver Canton, j'r, says: After the occurrence took place the A. G. Brown was headed to the shore, lines gotten out, and made fast. The rush of water was so great that the Brown's bitts were dragged out, and the boat floated down and careened over. She floated down the river about twenty miles below the point where she first careened; so we heard from the planters living there. The reason I will swear that the wreck is still at Pleasant's Point, is that I passed there once after the collision and was shown the place by a pilot. There was a number of empty barrels taken out of the boat's hold belonging to Dr. Wilkinson since she is at that point.

E. N. Dural, pilot of the Brown, says, "About one-half an hour after the blow the Brown went down."

From the foregoing I find that the collision between the *the* Brown and the Teutonia caused the total loss of the former.

81 In order, therefore, to ascertain the amount of all damages suffered by the A. G. Brown by reason of the collision, we have only to find the value of the Brown at the time she became a total loss.

"A vessel lost by collision is to be paid for at her value when lost." (Allen vs. Mackey, 1 Spr., 219.)

The actual damage sustained by the party at the time and place of injury ought to be the measure of value in damages in cases of collision. (Smith et al. vs. Coudry, Howard, S. Court, N. S., 28.)

The vessel by whose fault the collision took place shall be answerable for all the damage. (The Sciota, Davies' Reports, 359; The Steamboat Narragansett, Olcott's Reports, 246; do. do., 388; The Apollo, 9 Wheaton, 362; The Appollon, 2 Hagg., 30.)

82 The general rule of damage applicable to collisions which are not wilful, is that the owner of the injured vessel is to receive a remuneration which will place him in the situation in which he would have been but for the collision. (The Rhode Island, 1 Abbott, Adm. R., 1; same point, Williamson vs. Barrett, 13 How. U. S. S. C. R., 101–110.)

As to the value of the Brown at the time she became a total loss, W'm S. Basset, her captain, says: At the time of the collision the Brown was tight, staunch, well manned, and provided. The value of the Brown at the time of the collision, considering the trade she was in and the business she had, was $15,000. She could not be replaced at that price. I tried to get another like her and could not for that price. I had agreed to give $14,000 for the Brown on the 1st of February, besides paying her docking and other repairs, amounting to $3,000.

William Green, engineer, testifies, "that the Brown was strong, staunch, well manned, and provided at the time of the collision;
83 was on duty at the time of the accident."

Gerhard Bussing, manager of the Good Intent Dry-dock Company, says: In 1868 I was the foreman of the company. I know the steamer A. G. Brown. She was docked and repaired; but if I could see the bill I could say when.

Being shown Bill X, says the Brown was repaired in November, 1867, as stated in said bill.

The actual costs of these repairs was $7,154. A deduction of $654 was allowed after the loss of the Brown.

This bill simply includes the wooden-work repairs. Besides the wood-work, the boilers and brick-work and both engines were repaired; also both chimneys. The whole boat was entirely repainted—the cabin as well as the hull. Althoug' this work is entirely out of my line I judge that the repairs just now named were worth at least $5,000. I consider that the A. G. Brown at the time she was lost was worth from 14
84 to $15,000, taking into consideration the business she was engaged in and her actual value.

J. M. Peterson testifies as follows: "Have been interested in tug-boats on the river for the last seven years; have seen the A. G. Brown; made a trip on her; can't say how long before the loss of the Brown that I made a trip. In 1868 I had no boat in the lower-coast trade. Since the fall of 1868 I have been in that trade. I have run a boat all the last summer in the lower-coast trade, and have lost money. A boat may lose during the summer but they expect to regain in the winter season what they lost in the summer. I should not think that the Brown would have been worth less than $15,000 to $18,000, from the business she was engaged in and the profits she could have made, and from the prospects the owners had, as the season had arrived for large freights."

85 Captain Woods says: "I am a steamboat-master, and have been connected with the lower-coast trade since 1863; 'commanded the Aloe in 1868. Knew the A. G. Brown while she run in the lower trade in 1868. Considering the repairs that had been put on the Brown and the business she could have done during the business season, which was a good one, the Brown would have been cheap at $12,000."

Herman Schroeder says: "I am secretary of the Good Intent Dry-dock Company, from the beginning of the company; was so in November, 1867. Bill X is in my own hand. It is for the wood-work on the Brown. These repairs were made at the date stated in the bill. The work was done as set forth in the bill, and the prices were charged and paid as stated by the owners of the boat. At the same time the carpenter-work was done the repairs on the engines and boilers were also made. She was also painted and completely fitted out and in
86 perfect condition to run. I know nothing of the value of the repairs except the wood-work."

The testimony before me of W. T. Boardman fixes her value at about $15,000.

A. F. Jeanfreau testifies that her value at the time of her loss was about $15,000.

Mr. N. Radovich says: "I saw her immediately before she was lost. I was on board of her at that time. I would have given for her from $14,000 to $15,000, if I could have got her, for that trade."

But in contradiction of all the foregoing we have the testimony of Captain L. W. Cooper, as follows:

"I am a resident of New Orleans, and am river-inspector for New Orleans for the board of underwriters. I have acted in said capacity for nearly sixteen years. The steamboat A. G. Brown was docked and repaired under my supervision in October, 1868. I valued said
87 boat then at forty-five hundred dollars for insurance, and considered that a pretty high valuation, as they are restricted to two-thirds of their valuation for insurance. At that time the Brown was insured for three thousand dollars by the Union Mutual Insurance Company of New Orleans."

The testimony of L. W. Cooper is that the Brown was repaired under his supervision in October, 1868, but the evidence of witnesses is that the repairs were made in November, 1867, nearly a year before.

Captain J. G. Landry testifies that the ordinary life-time of a steamer on the Mississippi is about eight years; but he also says that some ten or fifteen years ago a great deal more care was taken in the construction of steamboats, and built of better material. A boat that cost him $37,000 he sold, after owning her over twelve years, for $7,000 or $7,500.

Captain John A. Hyde says: "Before the war we used to con-
88 sider the life-time of a boat from six *or* seven years, but since that time it is from ten to fourteen years."

He fixes the value of the Brown in 1868 at $7,500; thinks the Brown was about ten years of age.

Frequently a boat is not insured up to two-thirds of her real value. Frequently a man insures for a specific amount for specific property.

E. F. Gross testifies that the Brown was worth about $8,000 in 1868, when she was lost.

D. H. Connor, a ship-carpenter over 20 years, and manager of the Southern dry-dock since '49 : "The ordinary paying life-time of a Mississippi steamboat is about 4 years."

I, commissioner, on a careful examination and consideration of the voluminous testimony which has been taken in this case and before me, find that at the time of the collision the steamboat A. G. Brown was a staunch, strong vessel; that plaintiffs' witnesses have testified
89 to her value varying, in their estimation, from $12,000 to $15,000, and one from $15,000 to $18,000.

On the other hand, defendant's witnesses—Captain John E. Hyde fixes it at $7,500, and E. F. Gross at $8,000.

True it is that Captain L. W. Cooper testifies that he valued said boat in October, 1868, at $4,500 for insurance, and considered that a pretty high valuation. To do justice to the defendants I have hereinabove more fully recited his testimony; but a valuation for insurance may be agreed upon by parties, may be made in the interest of the party insuring for a special object by the assured without reference to the total actual value, but as security for a debt, and to satisfy the underwriter that the property insured was worth at least the amount it was desired to put upon the property.

True it is also that, in this case, no specific purpose is proved,
90 but this agreed valuation must be presumed to be for a specific purpose, when compared with the actual valuation of the said boat as proven by the witnesses of plaintiff. This presumption is confirmed by the fact that claimants' witnesses value her at almost double the agreed value in the policy of insurance.

But in behalf of claimants is to be considered the age of the Brown in connection with the testimony as to the duration of the life of a steamboat on the Mississippi River. It is also to be noted that the valuation of the boat by some of the witnesses of libellants was influenced by the consideration that she was engaged in a profitable business at the time she was lost.

But this commissioner considers that the actual value of the boat, for the purposes of this reference, does not depend on the profits she
91 was yielding at the time of her loss. Some boats of equal value may not be equally profitable to their owners.

It has been repeatedly held that supposed loss of profits cannot be made the element of a claim for damages. (1 Howard, 28; 3 Sumner, 144; 21 Wendell, 243; 1 Peters' C. C., 86; 1 Washington C. C., 13.)

As to the testimony produced by the libellants as to the repairs put upon the Brown, it should be considered, in connection with the testimony offered by claimants as to the time when a boat is considered worn out and when not worth repairing an old boat, as compared with the cost of building a new hull.

On a review of the whole case, I report that the amount of all damages suffered by the A. G. Brown, by reason of the collision, is nine thousand dollars.

Respectfully submitted.

(Signed) M. M. COHEN,
92 *Commissioner.*

Testimony.—Filed Feb'y 28th, 1872.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

United States dist. court, district of Louisiana.

Testimony taken before Commissioner Cohen, Tuesday, 16th January, 1872. Present, J. S. Whitaker, esq., for libellants.

W. T. BOARDMAN, being duly sworn for libellants, &c., deposes:

I have a knowledge of the steamboat A. G. Brown. I was often on board of her. I had her chartered in 1861. I did not know her particular condition at the time she was lost; have frequently seen her going up and down the river; can't tell how long before she was lost that I saw her. I am captain of the John T. Moore; have steamboated for about 21 years. I suppose the Brown was worth about $15,000
93 at the time she was lost. Boats are specially adapted to certain trades, according to their build. She was specially adapted to the lake-trade, having been made staunch and strong, and was very well adapted to this lower-coast trade. She was a stronger-built vessel than are usually built for this trade—three times as strong. I would have given for her, had I wanted such a boat, $15,000 cash or its equivalent.

Having waited fifteen minutes for the appearance of Mr. E. W. Huntington, the testimony is now closed by the commissioner's order as to W. T. Boardman, he having sworn that he is about to depart from New Orleans this day, to be absent about ten days, and has no clerk on his boat at present.

(Signed) W. T. BOARDMAN.

A. F. JENFREAU, sworn for libellants, says:

My occupation is steamboat master; have been such for about twenty-five years in lower-coast trade on the Mississippi. I was acquainted with the steamer A. G. Brown. She was running in the same
94 trade I was, and I saw her every trip. She was a well-built, strong boat, and well adapted to the lower-coast trade, and could not now be replaced by any other boat with which I am acquainted for that trade. Her value at the time of her loss was about $15,000. I would have given as much for such a boat had I wished to have purchased.

(The examination was here adjourned to Friday, 19th January, 1872, at 3½ p. m,)

At which time were present A. Voohries for libellants, and Whitaker, esq'r's, and E. W. Huntington, esq., for respondents.)

The cross-examination of last-named witnesses was commenced by Mr. Huntington:

I am captain of the Marcella; have been acting as steamboat master on the Mississippi River for about twenty-five years; have bought and sold steamboats. I bought the steamer Echo. That is the only
95 boat I ever bought. I bought and sold this one boat. In some trades steamboats depreciate in a year more than others. I cannot state exactly to what amount. It depends much on the way in which she is handled; can't tell to what amount a boat would depreciate in the trade in which the Brown was running; don't know the age of the Brown. The value of the boat does not depend upon her age, but upon the condition in which she is at the time of the valuation.

Question. How do you get at the value of the Brown?

Answer. Because she suited the trade in which she was *in*, and was well built and strong. In assessing the value of the Brown I take into consideration the profits of the trade in which she was *in;* can't tell exactly what the tonnage of the Brown was.

Redirect by Mr. Whitaker:

96 I think that the Brown would have carried about four hundred and fifty (450) hogsheads of sugar; can't say exactly how many.

(Being asked what he meant by profits of trade, he says that:) "The Brown was particularly adapted to the trade in which she was engaged, and could not be replaced by any other boat. I have chartered boats in the same trade in which the Brown was running.

(Signed) A. F. JEANFREAU.

C. VALLE, sworn for libellants, says:

I am captain of steam-tug Admiral; have been a master in what is called the lower-tow trade for the last five years. The A. G. Brown was running in the lower-coast trade in 1868. The Bradish Johnson and Hensly are now running in that trade. I knew the A. G. Brown well. I was alongside of her every other day when she was in that trade. I towed her to the dock and from it when she was repaired; have
97 never owned a boat, but have repaired one for my owners. I don't suppose you could build such a boat like the A. G. Brown at the time she was lost for less than $25,000. The wear and tear of the Brown at the time she was lost w*as* very little. From the time she was built she was well taken care of. I suppose the boat was then worth $15,000. When she was lost I think she could be sold for that amount. I judge she could carry over four hundred hogsheads of sugar; don't know the Brown's tonnage.

Cross-examined:

Question. If the boat would have cost $25,000 when built, and as there was so little wear and tear, how is it that, when she was sold, she was only worth $15,000?

Answer. There is only a reducement. You don't add. That boat, when she was owned by these parties they kept her in A No. 1, and another like her cannot be bought now.

Redirect:

This boat went under general repairs. She was repaired in the
94 summer previous to her loss; was thoroughly overhauled. The

older a boat gets, the less value she has. It does not hurt a boat by growing old. Sometimes boats do get of less value, and sometimes do not.

(Signed) his C. + mark. VALLE.

Witness:
(Signed) L. KELLS.

Mr. N. RADOVICH, being sworn for libellants, says:

My occupation is that of steamboat captain for the last fifteen years, and have been a ship-master for about twenty-five years. I am now in command of the steamer Bradish Johnson in the lower-coast trade. I did know about the steamer A. G. Brown; knew her from the time she came out, and constantly up to the time of her loss. In 1859 I wanted to buy her for the lower-coast trade. I wanted to give for her at that time $18,000.

99 The Brown was a heavy, staunch, strongly-built boat for the lake-trade, being built for that especial trade. I saw her immediately before she was lost. I was on board of her. At that time I would have given for her from $14,000 to $15,000, if I could have got her.

Cross-examination:

Can't tell how old the Brown was; have known her since '58. Her carrying capacity was between 300 and 400 hogsheads of sugar. When I first saw her in '59 she was almost new.

Question. How much would a boat without repairs depreciate per annum?

Answer. I suppose about 25%. I may spend on a boat $10,000 which I have just paid $5,000 for. It is hard to answer.

Question. Suppose a boat worth $10,000 to-day should run for a period of ten years, could that value be maintained by repairs on a boat?

100 Answer. Yes, if fully repair*ing* it can be done. You can keep her in order for ten or fifty years if the proper timbers are always supplied.

Question. Do you consider that the Brown when lost was worth as much as when you first saw her in '58?

Answer. I think she was worth less when she was lost.

Question. Why?

Answer. Because she was older at that time.

Question. Does the age make any difference if she had been repaired?

Answer. It makes some difference.

Question. Would it make a difference of $4,000 in ten years?

Answer. This is a hard question to answer. I suppose it might make that difference.

Question. Do you know what these gentlemen paid for the Brown?

Answer. No; I know nothing of the Brown being bought or sold. I know of a notarial act having been drawn up between Basset and the libellants. I read it myself. It was in reference to the sale from libellants to Basset. The consideration for the boat was $14,000.

101 (Signed) M. N. RADOVICH.

JOHN KLINK, GEORGE HOLT, and J. H. REINNO, being sworn, say that they made repairs on the steamer A. G. Brown in 1867 and 1868,

and when she was sent from the dock she was in perfect order, both times when said repairs were made.

(Signed) JOHN KLINK.
(") GEORGE HOLT.
(") J. H. REINES.

Testimony before commissioner.—Filed February 28th, 1872.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

Testimony taken before Commissioner Cohen, Tuesday, January 23d, 1872, for claimants. Present, E. W. Huntington, esq., for claimants, and H. Voorhies, esq'r, for libellants.

Captain J. G. LANDRY, sworn for claimants, says:

I have been master of steamboats on Mississippi River for about sixteen years. I have been the owner of a steamboat that has run
102 about twelve years. The ordinary life-time of a steamboat on the Mississippi is about 8 years.

The ordinary depreciation of a steamer on the Mississippi at first is about 20% per annum for several years, when she then gets to what might be termed her bearings—her intrinsic value. It entirely depends upon the materials made use of in the construction of the boat originally whether she is worth repairing after she is ten years of age.

Some steamboats are built of green material and are easily decayed by fermentation, which does not occur when the lumber made use of has been properly cured or seasoned.

Cross-examination by Mr. Voorhies:

Some ten or fifteen years ago a great deal more care was taken in the construction of steamboats, they being built generally with wood
103 of a year's standing and well seasoned; whilst at the present time there is not the same facility for obtaining well-seasoned material for that purpose.

Question. A boat being built with well-seasoned material and overhauled and thoroughly repaired from time to time, and held under good management, would it be of much value when ten years old?

Answer. She would retain the value of her machinery, which would certainly serve the life-time of two or three boats, and the hull and cabin would certainly retain a certain valuation which I could not specify.

That boat of mine, which I owned over twelve years, I sold at a bargain for $7,000 or $7,500. That boat run, to my knowledge, from the time I sold her in 1865 until four or five months ago, and for aught I know may be now running. She was engaged in the lumber-trade.

104 Redirect:

I think the boat cost me $37,000.

Re-cross:

I don't know the dimensions of the Brown. I should imagine she was some ten or fifteen feet shorter than the one above alluded to. My boat (the Sharp) was sunk four times in the Yazoo during the war.

(Signed) J. G. LANDRY.

Captain JOHN E. HYDE, sworn for claimants, says:

I have been engaged in steamboating for about 35 years on the Mississippi River—most of the time here, at New Orleans. Before the war we used to consider the ordinary life-time of a boat to be from 6 to 7 years. But since that it is much more—from ten to fourteen years. The depreciation on a steamboat is much greater the first year, and goes on decreasing. We consider that boats, the first year, depreciated 50 %, and the next 33 %, &c.

105 I was acquainted with the A. G. Brown in 1868. I should say that her real cash value at that time was $7,500.

Before the war a boat would be unfit for repairs after seven years, for the reason that it would cost more than to build a new hull. I think the Brown was about ten years of age.

Cross-examined:

(Being asked whether, in 1868, the Brown could have been purchased for $7,500, witness says:) It is a question I cannot answer; have not been in charge of a steamer since the war. During the war I was clerking on the Algerna and the Auzma.

I have myself had boats repaired before the war. After a boat has been running she cannot be made as good as new by being docked and fully repaired, but she can comparatively be made as good as new.

Question. Supposing these repairs were made from year to year
106 from the time she is first put on the water, and always kept in thoroughly repair, do you not consider that her original value would be retained to a great extent?

Answer. A boat well taken care of and well handled will, of course, last longer than if otherwise suffered to run down. A boat, if kept repaired, could not, from my experience, be run for fifty years on the Mississippi River.

My age is 60 years. I first commenced steamboating in 1836. Up to the present time, off and on, or connected with steamboats. The boats for the lower trade do not require to be of more strength, but of a different form, than those in the upper trade, as there is a great deal more wind and rougher weather in the trade below than above. I think a boat for the lower trade should have more depth of hold, as it gives her more stiffness. The depth of the hold does not add to the expense of building a boat, for what you add to her one way, you take from
107 another.

The Brown was peculiarly adapted to the trade below, from my knowledge of her, from her build.

Flat-bottomed boats are made to answer for that trade, but would not be as valuable as the A. G. Brown in that trade.

Redirect:

What amount of risk is usually taken by the underwriters in this city upon steamers on the Mississippi?

Answer. Frequently a boat is not insured up to two-thirds of her real value. Frequently a man goes and insures for a specific amount for specific purposes. The underwriters' limit is up to ⅔ of the agreed value.

(Signed) JOHN E. HYDE.

E. F. GROSS, sworn for claimants, says: Have been engaged in steamboating for 37 years as pilot and captain on the Mississippi River and others; have bought and sold steamboats. It is hard to tell the
108 life-time of a steamboat. Before the war we used to count 6 or 7

years as the life-time of a boat, and by that time did not consider them worth repairing.

I suppose, from the beginning, a Mississippi steamboat will depreciate 25 % to 30 % per annum from the time she was built until the time she was considered as worn out.

There was much demand for steamboats in the latter part of '68. Steamboat property was valuable then.

I suppose the Brown was worth about, after her repairs, $8,000; that is, in 1868, when she was lost.

Cross-examination:

Question. Are you aware of the repairs put upon the Brown?

Answer. No; I am aware of some repairs on her; does not know whether she was thoroughly repaired or not. If a vessel were repaired before the war, she would be made to last more than 7 years, but the repairs would cost so much as not to make it worth while to repair her.

109 The Brown was a strong-built boat, and was adapted to the trade in which she was. She was a deep-hold boat—about 7½ feet deep.

That mode of building adapted her for that trade, and well suited it. She was not built for that trade, but for the lake-trade.

(Signed) E. F. GROSS.

D. H. CONNOR, sworn for claimants, says:

I am a ship-carpenter, and manager of the Southern dry-dock. Since '49—over twenty years—I have been a ship-carpenter; have been master-carpenter since '58.

I have aided in and superintended in the repairs of a great many steamboats on the Mississippi River. The ordinary paying life-time of a Mississippi steamboat is about four years.

Can't state what the depreciation of a boat would be. We put it about 25 % per annum. It is hard to tell after what period a boat ceases to be fit for repairing.

110 Cross-examination:

Knew the Brown; don't know what her value was.

(Signed) D. H. CONNOR.

Rule to homologate.—From minutes Monday, March 4th, 1872.

No. 9243.

Ordered that libellants and claimants show cause, on Friday, 8th instant, at 11 a. m., why the commissioner's report be not approved and judgment entered in accordance therewith.

Exception to commissioner's report.—Filed March 7th, 1872.

A. H. SIEWERD AND A. P. KIP *vs.* STEAMSHIP TEUTONIA. } No. 9243.

U. S. district court.

The respondent hereby excepts to the commissioner's report made herein for the following reasons, to wit:

First. Because the commissioner erred in estimating the weight of the evidence as to the value of the A. G. Brown.

111 Second. Because it is conclusively proved that the libellants do not, by reason of the collision, sustain damages to the amount assessed by the commissioner.

(Signed) E. W. HUNTINGTON,
Proctor for Respondents.

Judgment.—From minutes of Friday, March 18th, 1872.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

The rule to homologate the commissioner's report came up—Whitaker and Voorhies for libellants; E. W. Huntington for claimants—when, after hearing counsel, it is ordered and decreed that the exception to the report be overruled, the report approved and homologated, and that in accordance therewith the libellants do have and recover from the steamship Teutonia, her tackle, apparel, &c., the sum of nine thousand dollars, with 5 % interest thereon from 5th January, 1869, till paid, and costs of suit.

112 And considering that the said steamship was released from seizure and restored to the claimant upon the execution of an admiralty stipulation, conditioned as the law directs, it is further ordered and decreed that J. Meyer, master, and lawful bailee for the owners, as principal, and Mrs. Felicite Schinkel, (born Angier,) widow in community of the late Edward Schinkel, who, during his life-time, had signed said stipulation as surety, and Marguerite M. Schinkel, wife of John H. Cordst; Mrs. Marie Elizabeth Schinkel, wife of Amandus Boyde, and represented by the said John H. Cordst; Mrs. Felicity Schinkel, wife of Henry J. Hansellmann; and Marie C. Schinkel, wife of Edward Muller, heirs of the late Edward Schinkel, now in possession of his estate, and who had been heretofore made parties to this suit, be condemned in solido to pay the foregoing judgment, with interest and costs.

113 *Petition of appeal.—Filed March 18th, 1872.*

A. H. SIEWERD AND A. P. KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

District of the United States for the district of Louisiana.

The claimant and sureties in the above-entitled suit respectfully shows that he conceives himself aggrieved by the final decree rendered in said cause, and prays that he be allowed an appeal from said decree, as a supersedeas to the circuit court next to be holden in this district.

(Signed) E. W. HUNTINGTON,
Proctor for Claimants.

Order of March 18th, 1872.

An appeal to operate as a supersedeas is allowed in this case, as prayed for, returnable to the circuit court of the United States for the 5th district of Louisiana the 1st Monday of April, 1872, the appellants giving bond in the sum of $18,000, with surety, according to law.

March 18th, 1872.

114 (Signed) E. H. DURELL, *Judge.*

Testimony of surety.—Filed March 18th, 1872.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243.

A. Frerricks, being sworn, says: I reside in New Orleans; am worth $18,000 over and above all my debts; own a store corner Carondelet and Gravier; value, $45,000; no mortgage.

(Signed) A. FRERRICKS.

Sworn to and subscribed before me this 18th March, 1872.

(Signed) K. LOEW, *U. S. C.*

This testimony was taken in presence of counsel on both sides.

Attest:

(Signed) K. LOEW, *U. S. C.*

Appeal bond.—Filed March 18th, 1872.

UNITED STATES OF AMERICA,
District of Louisiana:

115 District court of the United States. In admiralty.

SIEWERD AND KIP
vs.
STEAMSHIP TEUTONIA. } No. 9243. Appeal bond.

Know all men by these presents that we, J. Meyer, master, and Mrs. Felicite Schinkel, Marguerite M. Schinkel, wife of J. H. Cordst; Marie Elizabeth Schinkel, wife of A. Bryde; Felicity Schinkel, wife of H. J. Hanselmann; and Marie C. Schinkel, wife of E. Muller, as principals, and Adolph Frerricks, of the city of New Orleans, as surety, are held and firmly bound unto the libellants in the sum of eighteen thousand dollars, to be paid to the said Siewerd and Kip; for the payment of which, well and truly to be made, in lawful money of the United States, we bind ourselves and each of us, our and each of our heirs, executors, administrators, jointly and severally, firmly by these presents,
116 sealed with our seals and dated at New Orleans, the 18th day of March, 1872.

Whereas the above-named parties have appealed to the next term of the circuit court of the United States for the 5th circuit, and district of Louisiana from a final judgment of the district court of the United States for said district, rendered against them the 8th and signed on the 13th March, 1872, in the above-entitled cause:

Now, therefore, the condition of this obligation is such, that if the above-named appellant shall prosecute his appeal to effect and answer all damages and costs, and satisfy whatever judgment may be rendered against him if he fails to make his appeal good, then this obligation to be void; otherwise, the same shall be and remain in full force and effect.

(Signed) E. W. HUNTINGTON, [L. S.]
Proctor for Appellants.

(Signed) A. FRERRICKS. [L. S.]

Signed, sealed, and delivered in the presence of—

(Signed) K. LOEW, *D'y Clk.*

117 *Certified copy of protest of North-German steamship Teutonia, Meyer, master. Hamburg to New Orleans, 6th January, 1869. B. 9243. Filed with testimony of J. Meyer, January 8th, 1869. Arthur C. Waugh, marine notary, New Orleans.*

UNITED STATES OF AMERICA,
State of Louisiana, City of New Orleans:

By this public instrument of protest be it known that, on the sixth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, and of the Independence of the United States of America the ninety-third, before me, Arthur C. Waugh, a notary public in and for the parish of Orleans, dwelling in the city of New Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared J. Meyer, master; J. F. Preiss, 2d officer; C. Eggus, 3rd officer; G. Lummick, 2d boatswain; A. Hezd, quartermaster; Nicholas Laling, mariner; F. G. Gronerman, mariner; and William Nelson, licensed river-
pilot, all of and belonging to the North-German steamship Teu-
118 tonia, which said appearers, after having been duly sworn by me, the said notary, upon the Holy Evangelists of Almighty God, voluntarily, freely, and solemnly declare and depose as follows, to wit: That said steamship from Hamburg, bound for the port of New Orleans, with a cargo of assorted merchandise and passengers; that when they started, as aforesaid, the said steamship was stout, staunch, and strong; had her cargo well and sufficiently stowed and secured; was well manned, tackled, victualed, apparelled, and appointed; and was in every respect fit for sea and the voyage she was about to undertake.

That, on the night of the 30th December, 1868, at 11.45, whilst said steamship was coming up the Mississippi River, on the starboard shore (left bank) of the Mississippi, under charge of William Nelson, a duly-
licensed river-pilot, who was on watch on the foretopsail-yard,
119 the master and second officer being on the bridge, and two men on the lookout forward, third officer and quartermaster on the quarter-deck, and the whole watch on deck, the engine at the time going slowly on account of the darkness and very heavy fog, we heard three whistles of a steamer.

The Teutonia immediately blew one whistle for "starboard shore," but no answer was returned to it. Then she blew three "attention whistles," meaning to say, "Look out for yourself;" but no answer was given to them. Again she blew one long whistle, and repeated it two or three times without receiving any answer.

The engine of the Teutonia was then stopped, as we discovered the lights of a steamer two points by the compass on the port bow coming toward us. Our pilot ordered the helm of the Teutonia put hard a-port,
which order was immediately obeyed.

120 The steamer, which we afterwards learned was the A. G. Brown, then ran into us, and struck us in the port side, one hundred and fifteen feet from the stern of our ship.

We then heard the order "Back her," given on the A. G. Brown. She was at that moment alongside our ship, heading down stream.

The order was then given by the pilot of the "Teutonia" to go slow, put the helm a-starboard, and to steer northwest-by-west-half-west, which was immediately executed, and we then saw a light on the right bank of the Mississippi, which proved to be one of Morgan's steamers at anchor.

The Teutonia was brought to an anchor, and an examination made to see if she had suffered any injury by the collision.

We looked for the strange steamer, but could not see anything of her owing to the heavy fog, and heard nothing of her whilst we were at anchor, where we lay about three hours.

121 On the 31st December, at about 3 a. m., got up the anchor, proceeded up the river, and arrived at the levee at about 7.30 a. m. of that day.

Now, therefore, because of the premises, and as all the loss, damage, and injury which already have or may hereafter appear to have happened or accrued to the said steamship or her said cargo, has been occasioned solely by the circumstances hereinbefore stated, and cannot nor ought not to be attributed to any insufficiency of the said steamship or default of him, the said master, his officers, or crew, he now requires me, the said notary, to make his protest, and this public act thereof, that the same may serve and be and remain in full force and virtue, as of right shall appertain.

And thereupon the said master doth protest, and I, the said notary, at his special interest and request, do by these presents publically and solemnly protest against winds, weather, and collision, by being

122 run into by the steamer A. G. Brown, and against all and every accident, matter, and thing had and met with as aforesaid, whereby or by means whereof the said steamship or her cargo already has or hereafter shall appear to have suffered or sustained damages or injury, for all losses, costs, charges, expenses, damages, and injury which the said steamship, the owner or owners of the said steamship, or the owners, freighters, or shippers of her said cargo, or any other person or persons interested or concerned in either, already have or may hereafter pay, sustain, incur, or be put into by, through, or on account of the premises, or for which the insurer or insurers of the said steamship or her cargo is or are respectively liable to pay or make contribution or average, according to custom, or their respective contracts or obligations, so that no part of such losses and expenses already incurred, or hereafter to be incurred, do fall upon him, the said J. Meyer,

123 master, his officers, or crew.

Thus done and protested at my office, in the city of New Orleans, this sixth day of January, in the year of our Lord one thousand eight hundred and sixty-nine, in the presence of Arthur Waugh and Louis Le Vasseur, both of this city, competent witnesses, who hereunto sign their names, together with the said appearers, and me, said notary.

J. MEYER, *Master.*
J. F. PREISS, 2*d Officer.*
C. EGGUS, 3*d* "
G. LUMICK, 2*d Boats*man.
A. HEZD, *Quartermaster.*
NICHOLAS LALING, *Mariner.*
T. G. GRONERMAN, "
WILLIAM NELSON, *Pilot.*

Witnesses:
ARTHUR WAUGH.
LOUIS LE VASSEUR.

ARTHUR C. WAUGH, *Not. Pub.*

[Twenty-five cents I. R. stamp affixed and cancelled.]

A true copy.
[L. S.]

ARTHUR C. WAUGH,
Not. Public.

124 District court of the U. S., La.

I certify that the preceeding 72 pages, manuscript, together with the printed record, consisting of 57 pages, do contain and form a complete and correct transcript of all the proceedings had, evidence adduced, and documents filed at the trial of the case of Siewerd and Kip vs. The Steamship Teutonia, No. 9243 of the docket, with the exception of Diagram A, the Government rules and regulations, and the 2 bills of sale, marked 22 and 23, and policy 24, which accompany the transcript, in original, and diagram marked 9, which is lost or mislaid, and cannot be found after diligent search.

In testimony whereof I hereto set my hand and the seal of our court, at New Orleans, this 27th March, 1872.

[SEAL.] (Signed) K. LOEW, *D'y Cle'k.*

PROCEEDINGS IN U. S. CIRCUIT COURT.

125 *Hearing and continuance of cause. Extract from the minutes.*

United States circuit court, fifth circuit, and district of Louisiana, April term, 1872.

NEW ORLEANS, *Tuesday, May 28th*, 1872.

Court met pursuant to adjournment. Present Hon. W. B. Woods, pr's'd'g judge.

SIEWERD AND KIP *vs.* S. S. TEUTONIA. } No. 6689.

This cause came up on the transcript of the record from the district court—Voorhies and Whitaker for libellants and appellees, E. W. Huntington for claimant and appellants—when after hearing the pleadings, evidence, and argument, the cause is continued till to-morrow, at 11 a. m.

Note of evidence. Filed May 28th, 1872.

SIEWERD AND KIP *versus* S. S. TEUTONIA. } 6689.

126 Plan filed.

Proctors offered the evidence taken in behalf their respective clients in the court below.

Hearing and submission of cause. Extract from minutes of May 29th, 1872.

SIEWERD AND KIP *vs.* S. S. TEUTONIA. } No. 6689.

This cause was resumed, and after hearing further argument, the court took time to advise.

Decree.—From judgment-book.

Circuit court of the United States, fifth circuit, and district of Louisiana, April term, 1872.

NEW ORLEANS, *Friday, May 31st*, 1872.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, pr's'd'g judge.

SIEWERD AND KIP *vs.* STEAMSHIP TEUTONIA. } No. 6689.

127 For reasons orally assigned, it is ordered and decreed that the judgment rendered by the district court be avoided and reversed, and it is now ordered, adjudged, and decreed by this court that the libel be dismissed with costs in both courts.

Decree rendered May 31st, 1872.

Decree signed June 3rd, 1872.

(Signed) W. B. WOODS, *Judge.*

Motion and order for appeal filed, and extract from minutes, June 3rd, 1872.

April term, 1872.

NEW ORLEANS, *Monday, June 3rd.* 1872.

Court met pursuant to adjournment. Present, Hon. W. B. Woods, pr's'd'g judge. Present, Hon. E. H. Durell, district judge.

SIEWERD AND KIP *vs.* S. S. TEUTONIA. } No. 6689.

On motion of J. S. Whitaker, proctor for Siewerd and Kip, libellants in above-entitled cause, and on suggesting to the court that libellants are aggrieved by the judgment herein rendered on the 31st inst.,
128 dismissing their libel with costs in both courts, and that they desire a suspensive appeal from said judgment, to act as a supersedeas:

It is ordered by the court that an appeal be granted to said libellants to act as a supersedeas, said appeal being made returnable to the Supreme Court of the United States on the first Monday of December next, on libellants giving bond and security in the sum of five hundred dollars, conditioned as the law directs.

Bond for appeal.—Filed June 3rd, 1872.

Know all men by these presents that we, Siewerd and Kip, libellants, as principals, *said* Thomas Schorr, as surety, are held and firmly bound, jointly and severally, unto Joachim Meyer, master of the steamship Teutonia, the steamship Teutonia, her owners, and all parties in interest, whether or sureties, in the sum of five hundred dollars, lawful
129 money of the United States of America, to be paid to the said Joachim Meyer, master of the steamship Teutonia, the steamship Teutonia, her owners, and all parties in interest, whether claimants

or sureties, their heirs, executors, administrators, and assigns, for which payment, well and truly to be made, we bind ourselves, and each of us by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the third day of June, in the year of our Lord eighteen hundred and seventy-two.

Whereas the said Siewerd & Kip have this day presented a motion to the honorable the circuit court of the United States for the fifth circuit, holding sessions in and for the district of Louisiana, praying that an appeal be allowed them from the judgment rendered herein on the 31st May ultimo, dismissing their libel with costs in both courts, to act as a supersedeas, and the court has granted said prayer, said appeal being made returnable in the Supreme Court on the 1st Monday
130 of December next:

Now, the condition of the above obligation is, that we, the above-bounden Siewerd and Kip, and Thomas Schorr, will well and truly pay to the said Joachim Meyer and others, as above named, claimants in said suit, all such damages as they may recover against us, in case it should be decided that the said appeal was wrongfully obtained.

(Signed) SIEWERD & KIP. [L. S.]
(Signed) THOMAS SCHORR. [L. S.]

Signed, sealed, & delivered in the presence of—
(Signed) FELIX BECKER.
(do.) F. RAQUET.

Approved:
(Signed) W. B. WOODS, *Judge.*

Agreement.—Filed November 8th, 1872.

U. S. circuit court.

SIEWERD AND KIP *vs.* STEAMSHIP TEUTONIA. } No. 6689.

It is agreed that in making up transcript of appeal in this case, the clerk be not required to copy the evidence taken in the district court & offered in the circuit court on the trial of this cause, contained in the printed pamphlet on file; it being understood that said printed pamphlet be annexed to and form part of the transcript to be
131 taken up to the Supreme Court, also in original form, policy of insurance No. 784, Union Insurance Company, and bills of sale of the hull of st'r A. G. Brown, both produced before Commissioner M. M. Cohen, and filed by him 23d June, 1872, and subsequently filed by the clerk of the court, Feb'y 28th, 1872; and rule and regulations for the government of pilots of June 26th, 1869, offered in evidence by libellants, and filed December 23d, 1871.

It is further agreed that the original plans, descriptive of the course of steamboat and steamship, offered respectively by the libellants and the claimants, be annexed in their original form to said transcript, the clerk being dispensed from making copies therof.

New Orleans, November 7th, 1872.

(Signed). J. S. WHITAKER & A. VOORHIES,
For Libellants.

(Signed) E. W. HUNTINGTON,
Proctor for Claimants.

132 UNITED STATES OF AMERICA:

Circuit court of the United States, fifth circuit, and district of Louisiana.

CLERK'S OFFICE:

I, Francis A. Woolfley, clerk of the circuit court of the United States for fifth circuit, and district of Louisiana, do hereby certify that the foregoing 73 pages, manuscript, together with the printed record, consisting of 75 pages, contain and form a full, complete, true, and perfect transcript of the record and proceedings had, together with all the evidence adduced on the trial of the case of Siewerd & Kip vs. Steamship Teutonia, No. 6689 of the docket, so far as the same now remain of record or on file in said court.

Witness my hand and the seal of said court, at the city of New Orleans, this 12th day of November, A. D. 1872.

[SEAL.] F. A. WOOLFLEY, *Clerk.*

I, E. H. Durell, United States judge for the district of Louisiana, do hereby certify that Francis A. Woolfley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit, and district of Louisiana, was at the time of signing said certificate and is now the clerk of said court; that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand, at the city of New Orleans, in said district, this 12th day of November, A. D. 1872.

E. H. DURELL, *Judge.*

133 THE UNITED STATES OF AMERICA,
District of Louisiana:

The President of the United States to Joachim Meyer, master of the steamship Teutonia, the steamship Teutonia, her owners, and all parties in interest, whether claimants or sureties, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a motion for appeal & order of record, & filed in the clerk's office of the circuit court of the United States for the fifth circuit, and district of Louisiana, wherein Siewerd & Kip are libellants and appellants, and you are defendants, to show cause, if any there be, why the judgment rendered against the said libellants & appell'ts, as in said motion for appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, this third day of June, in the year of our Lord one thousand eight hundred and seventy-two.

[SEAL.] W. B. WOODS, *Judge.*

134 (Indorsed:) United States circuit court. No. 6689. Siewerd & Kip vs. steamship Teutonia. Citation of appeal.

Marshal's return.

Received June 4, '72, by the U. S. marshal, and on the 5th day of June, 1872, served a copy of within citation of appeal, personally, on E.

W. Huntington, att'y for Joachim Master, master of Steamship Teutonia.
New Orleans, June the 24th, 1872.

S. W. REED,
D'y U. S. Marshal.

On this 24th day of June, 1872, personally appeared before me the subscriber, S. W. Reed, and makes oath that he delivered a true copy of the within citation, as stated in his official return hereon.

S. W. REED,
D'y U. S. Marshal.

Sworn to & subscribed before me.

F. B. VINOT,
U. S. Comm'r.

135 Know all men by these presents that I, John L. Baringer, of New Orleans, owner of the steamboat A. G. Brown, of New Orleans, for and in consideration of the sum of nine thousand and thirty-six ($9,036) dollars in currency of the United States of America, to me in hand paid by A. H. Sieward, one-half, and A. P. Kip, one-half, both of New Orleans, the receipt whereof is hereby acknowledged, have, and by these presents do, grant, bargain, sell, assign, transfer, and set over unto the said A. H. Sieward $\frac{1}{3}$, A. P. Kip $\frac{1}{3}$, and unto their executors, administrators, and assigns one-third each of the hull of the said steamer, together with one-third of her boiler, engines, machinery, her masts, yards, sails, rigging, anchors, cables, boats, tackle, apparel, and appurtenances; which said vessel is enrolled in the port of New Orleans, in the words following, to wit:

No. 5.] *Enrollment.*

136 Enrollment in conformity to an act of Congress of the United States of America, entitled "An act for the enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

An act of the Congress of the United States.

John L. Baringer, of New Orleans, State of Louisiana, having taken or subscribed the oath required by the said act, and having sworn that he is a citizen of the United States, and sole owner of the said ship or vessel called the A. G. Brown, of New Orleans, whereof A. Queant is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Brownsville, State of Penn'a, in the year 1858, as per enrollment No. 2, issued and dated at New Orleans, July 2, 1866, now surrendered property changed.

S. A. STOCKDALE,
D'y Coll'r.

JONA C. WHITE,
D'y Naval Officer.

And said enrollment No. 2 having certified that the said ship
137 or vessel has one deck and mast, and that her length is one hundred and thirty-eight (138) $\frac{1}{10}$ feet, her breadth, twenty-five (25) $\frac{7}{10}$ feet; her depth five (5) $\frac{3}{10}$ feet; her height, $\frac{}{10}$ feet; that

she measures one hundred and thirty-four tons and ninety-nine hundredths, viz:

	Tonnage. 100.
Capacity under tonnage-deck	134.99
Capacity between decks above tonnage-deck	
Capacity of enclosures on the upper deck	
To'al tonnage	134.99

and that she is side-wheel steamboat, has transom stern, and plain head.

And the said J. L. Baringer having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamboat has been duly enrolled at the port of New Orleans.

Given under our hands and seal, at the port of New Orleans, third day of July, in the year of our Lord one thousand eight hundred sixty-six.

138 To have and to hold the said two-thirds of the steamboat A. G. Brown, and appurtenances, unto the said A. H. Sieward and A. P. Kip, in the proportion of one-third unto each, and to their executors, administrators, and assigns forever, and the said vendor, J. L. Baringer, for myself, my heirs, executors, and administrators, do hereby covenant and agree to and with the said purchaser, A. H. Sieward and A. P. Kip, executors, administrators, and assigns, that, on the execution of these presents, I, the said J. L. Baringer, am the true and lawful owner of the said steamboat A. G. Brown, and her appurtenances, and that I now have full right and authority to sell and dispose of the same, freed from and cleared of all claims, incumbrances, or demands whatsoever.

$9.50 in stamps on original.

In witness whereof I have hereunto set my hand and seal, at the city of New Orleans, the sixteenth day of October, in the year of our Lord one thousand eight hundred and sixty-six.

JOHN L. BARINGER. [L. S.]
ADOLPH HENRY SIEWARD. [L. S.]
H. P. KIP. [L. S.]

Sealed, signed, and delivered in the presence of—
S. J. FAUST.
F. B. EARHART.

139 STATE OF LOUISIANA,
City of New Orleans:

Be it known that on this sixteenth day of October, eighteen hundred and sixty-six, before me, F. B. Earhart, a notary public, in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared John L. Baringer, (vendor,) and A. H. Sieward and A. P. Kip, (purchasers,) all of this city and State aforesaid, who declared that they executed the foregoing bill of sale as their free acts and deeds, and for the purpose therein set forth.

In testimony whereof I have hereunto set my hand and affixed my seal of office at the city of New Orleans the day and year last above written.

[NOTARIAL SEAL.]

F. B. EARHART,
Notary Public.

CUSTOM-HOUSE, NEW ORLEANS.

Received for record this 16th day of October, 1866, at 30 minutes past 2 o'clock p. m. Recorded in book H, page 28.

THEO. MEEKS,
Register of Sales.

District court of New Orleans.—A. J. Y.

COLLECTOR'S OFFICE, *Jan'y* 22, 1872.

I hereby certify the above to be a true copy of the record on file at this office.

G. P. CHAMPLIN,
D. Coll.

140 (Endorsed:) 6689. U. S. C. c't. Bill of sale of the steamboat A. G. Brown. John S. Baringer to Adolph Henry Sieward, A. P. Kip. 23. Custom-house, New Orleans, La. , 186 . Received for record o'clock m. Recorded in book page . Produced, 23 Jan'y, 1872. M. M. Cohen, U. S. com'r. 9243. Filed Feb'y 28, '72. K. Loew, d'y cl'k. 6689. U. S. circuit court. Filed March 30, '72. F. B. Vinot, d'y cl'k.

141 Know all men by these presents that I, John L. Baringer, of New Orleans, State of Louisiana, one-third owner of the steamer A. G. Brown, of New Orleans, for and in consideration of the sum of three thousand (3,000) dollars cash in lawful money of the United States of America, to me in hand paid by A. H. Sieward, one half, $1,500, and A. P. Kip, one half, $1,500, the receipt whereof is hereby acknowledged, have, and by these presents do, grant, bargain, sell, assign, transfer, and set over unto the said A. H. Sieward and A. P. Kip, one-sixth each, and unto their executors, administrators, and assigns, my said one-third of the steamboat A. G. Brown, together with one-third of all and singular, her furniture, masts, yards, sails, rigging, anchors, cables, boats, tackle, apparel, and appurtenances; which said vessel is enrolled in the port of New Orleans in the words following, to wit:

No. 108.] *Enrollment. Permanent.*

142 Enrollment in conformity to an act of Congress of the United States of America, entitled "An act for the enrolling and licensing ships or vessels to be employed in the coasting trade and fisheries, and for regulating the same," approved February 18, 1793, and of "An act to regulate the admeasurement of tonnage of ships and vessels of the United States," approved May 6, 1864.

An act of the Congress of the United States.

(Signed) WM. P. KELLOGG, By W. Q. BROWN, *A. Dep'ty Collector.*

A. H. Sieward, of New Orleans, State of Louisiana, having taken or subscribed the oath required by the said act, and having sworn that he owns one-third, (⅓,) John L. Baringer one-third, (⅓,) and A. P. Kip one-third, (⅓,) all of New Orleans, State aforesaid, and are citizens of the United States, and sole owner of the said ship or vessel called the A. G. Brown of New Orleans, whereof A. H. Sieward is at present master, and, as he hath sworn, is a citizen of the United States, and that the said ship or vessel was built at Brownsville, State of Penn'a, in the year 1858, as per enrollment No. 5, issued and dated at New Orleans, July 3, 1866, now surrendered-property changed in part.

(Signed) JONA. C. WHITE, *D'y Naval Officer.*

143

And said enrollment No. 5 having certified that the said ship or vessel has one deck and no mast, and that her length is one hundred and thirty-eight (138) $\frac{1}{10}$ feet, her breadth twenty-five (25) $\frac{7}{10}$ feet, her depth five (5) $\frac{3}{10}$ feet, her height 10 feet; that she measures one hundred and thirty-four tons and ninety-nine hundredths, viz:

	Tonnage. $\frac{1}{100}$
Capacity under tonnage-deck	134.99
Capacity between decks above tonnage-deck	
Capacity of enclosures on the upper deck	
Total tonnage	134.99

and that she is side-wheel steamboat, has transom stern and plain head.

And the said A. H. Sieward, having agreed to the description and admeasurement above specified, and sufficient security having been given according to the said act, the said steamboat has been duly enrolled at the port of New Orleans.

144 Given under our hands and seal at the port of New Orleans, sixteenth day of October, in the year of our Lord one thousand eight hundred and sixty-six.

To have and to hold the said one-third of the said steamboat A. G. Brown, and appurtenances, unto the said A. H. Sieward and A. P. Kip in the proportion of one-sixth unto each, and unto their heirs, executors, administrators, and assigns forever. And I, the said John L. Baringer, for myself and my heirs, executors, and administrators, do hereby covenant and agree to and with the said A. H. Sieward and A. P. Kip, their heirs, executors, administrators, and assigns, that on the execution of these presents I, the said John L. Baringer, am the true and lawful owner of the said one-third of the steamboat A. G. Brown and appurtenances, and that I now have full right and authority to sell and dispose of the same, freed from and cleared of all claims, incumbrances, or demands whatsoever.

In witness whereof I have hereunto set my hand and seal at
145 the city of New Orleans, the thirteenth day of March, in the year of our Lord one thousand eight hundred and sixty-seven.

JOHN L. BARRINGER.
A. H. SIEWARD. [L. S.]
A. P. KIP. [L. S.]

Sealed, signed, and delivered in the presence of—
CHAS. E. COURIER.
B. L. VAN COURT.

STATE OF LOUISIANA, *City of New Orleans:*

Be it known that, on this day before me, F. B. Earhart, a notary public in and for the parish of Orleans, State of Louisiana, duly commissioned and sworn, personally came and appeared John L. Baringer, (vendor,) A. H. Sieward, A. P. Kip, (purchasers,) all of the city and State aforesaid, who declared that they executed the foregoing bill of sale as their free act and deed, and for the purposes therein set forth.

In testimony whereof I have hereunto set my hand, and affixed my seal of office, at the city of New Orleans, this thirteenth day of March, A. D. 1867.

NOTARIAL SEAL.] F. B. EARHART, *N. P.*

146 CUSTOM-HOUSE, NEW ORLEANS.

Received for record this 13th day of March, 1867, at 30 minutes past 9 o'clock a. m.; recorded in book H, page 128.

THEO. MEEKS,
Register of Sales.

District and port of New Orleans.—A. J. Y.

COLLECTOR'S OFFICE, *Jan'y 22d*, 1872.

I hereby certify the above to be a true copy of the record on file at this office.

G. P. CHAMPLIN, *D'y Coll'r.*

(Endorsed:) Bill of sale of the to 9243. 22. Custom-house, New Orleans, La., , 186 . Received for record o'clock m. Recorded in book page . Produced 23d Jan'y, 1872. M. M. Cohen, U. S. com'r. Filed Feb'y 28, '72. K. Loew, d'y cl'k.

(Further endorsed:) 6689. U.S. circuit court. Filed March 30, 1872. F. B. Vinot, d'y clerk. Sieward & Kip vs. Steamer Teutonia.

147 Steamboat.] [No. 784.]

The Union Insurance Company of New Orleans do insure and cause to be insured (lost or not lost:)

A. H. Sieward & A. P. Kip, a/c of themselves—loss, if any, payable to the Good Intent Dry-dock Co.—in the sum of three thousand dollars upon the hull, engine, furniture, and appurtenances of the steamboat A. G. Brown, for the term of six months. The said steamboat and appurtenances being valued, by agreement, at forty-five hundred dollars, and it being agreed that insurance to the amount of three thousand dollars, including this policy, may be effected on the said steamboat and appurtenances, but if a greater sum is insured, then this policy shall be void.

And it is understood and agreed that the said steamboat is now commanded by and may be employed, during the term of this policy, in navigating in the trade between Bayou Sara, and the mouth of the Mississippi River.

Sum insured, excluding premium, $3,000.

148 And, during the continuance of this policy, it shall be lawful for the said steamboat to touch and stay at any places on the said waters, if thereunto obliged by stress of weather or unavoidable accidents, or if the same be necessary in the transaction of the usual business connected with the navigation, as aforesaid, without prejudice to this insurance.

Beginning the adventure upon the said steamboat and appurtenances on the sixth day of July, 1868, and to continue and endure until the sixth day of January, 1869, at 12 o'clock noon.

Touching the perils which this company are contented to bear and take upon themselves in the premises, they are of the rivers, and fires, and all other perils, losses, and misfortunes which shall come to the damage of said steamboat and appurtenances, according to the true intent and meaning of this policy, as expressed herein.

And it is agreed and warranted by the assured that the said steamboat is and shall be kept, during the term of this policy, in a sound and sea-

Valuation, excluding premium, 4,500 dollars.

worthy condition, (unavoidable accidents happening upon a voyage alone excepted,) and the said

steamboat shall be kept well and sufficiently found in every particular, and fully and competently provided with master, officers, and crew for the navigation proposed herein; and if the said steamboat shall be unseaworthy or shall be condemned as unseaworthy by any steamboat inspector, and notice thereof given to the assured or any agents of the assured, except while proceeding to the nearest port for repairs or during repairs, then this policy shall be void.

And it is agreed that, in case of any loss or misfortune aforesaid, it shall be the duty of the assured to use every reasonable effort for the safeguard and recovery of the said steamboat and every part thereof, and, if recovered, to cause the same to be forthwith repaired, if practicable; to the charges whereof the said insurance company will contribute in proportion as the sum herein insured bears to the agreed value herein; and in case of the neglect or refusal of the assu'ed, their agents, or assigns to adopt prompt and efficient measures for the safeguard and recovery thereof, then the said company shall have the election to interpose and recover said steamboat, or any part thereof, and cause the same to be repaired for the account of the assured; to the charges of which the said insurance company will contribute in proportion as the sum herein insured bears to the agreed value in this policy. And in no case whatever shall the assured have the right to abandon until it is ascertained that the recovery and the repairs of said steamboat are impracticable; nor shall the assured have the right to sell the wreck, or any part thereof, without the written consent of the said company.

(Written across the face:) J. M. CRAWFORD, *Sec'y.*

And it is agreed that the said insurance company shall not be liable for any loss or damage arising from, occasioned by, or occurring in consequence of the bursting of any of the boilers, or collapsing of any of the flues, or the breaking of any of the machinery of the said steamboat; nor shall the said insurance company be liable for any expenses arising from the stranding or grounding of said steamboat, unless such stranding or grounding be caused from stress of weather, or from collision or other unavoidable causes; nor shall the said company be liable for any claim of provisions furnished to the officers or crew, nor for their wages, when the said steamboat is detained by any disaster, or during subsequent repairs. And in the adjustment of all claims for the repairs of the steamboat, or replacing apparel or furniture, the loss or damage shall only be estimated or charged against the insurance, after excluding all losses or damages requiring to be repaired or replaced in consequence, in whole or in part, of wear and tear or natural decay, the proceeds of all articles replaced at the charges of the insurers shall be deducted from the nett loss after the usual deduction of one-third "new for old" from the cost of such repairs, or replacing apparel or furniture, that being the agreed difference in value between new and old materials.

And it is also agreed that the said insurance company shall not be liable for any expense of dockage or haulling out for repairs, or proceeding to a port for repairs, nor for any loss (except in cases of general average) unless the necessary repairs, required solely by the disaster, amounts to ten per cent. on the agreed value in this policy, after deducting proceeds of savings, if any, and exclusive of all expenses of ascertaining and proving the same.

Insurance restricted to 3,000 dollars.

And it is also agreed that in case of loss, the amount to be paid by said insurance company shall be such proportion thereof as the

sum herein insured bears to the agreed value in this policy, and the assured shall abate two per cent. therefrom; which amount shall be due and payable in two months after proof of loss, and adjustment of the same, in currency existing at the time said loss shall become due, first deducting the amount of the note or notes, bill or bills, for the premium, if unpaid, and all other notes, accounts, and demands of the said company against the assured.

And it is also agreed that all claims under this policy are barred unless prosecuted within one year from the date of loss.

And it is also agreed that the insurers will not be answerable for damages to other vessels or property in consequence of collision or running foul, nor for any general average or expenses on account of such damage.

And it is also agreed and warranted by the assured not to tow any barge, flat, or other craft, except in case of distress.

153 And it is also agreed and warranted by the assured, free from all claim for loss or damages occurring during the time the within boat may be in the custody of the sheriff or marshal.

And it is further agreed that said insurance company shall not be liable for any amount of losses during the continuance of this policy, which in the aggregate shall exceed the amount insured.

And it is hereby further agreed that this policy shall become void upon assignment thereof, transfer of interest, or change of command, or if any other insurance be made upon the interest hereby insured, which, together with this insurance, shall exceed three thousand dollars, unless the consent of this company thereto be obtained and endorsed thereon.

And it is also agreed that in no case whatever where this policy is vacated or becomes void in consequence of the violation of any of its provisions on the part of the assured, or their agents or assigns, shall the assured be entitled to any return premium.

Warranted by the assured, free from all claim for loss or damage arising from or growing out of the collision of foreign or other powers, or of our Government with others.

154 Premium.. $337 50
Policy.....
$337 50

And the insurance company aforesaid do hereby bind the capital stock and other common property of said insurance company to the assured, his, her, or their heirs, executors, administrators, and assigns, for the true performance of the premises, having received the consideration for his insurance at the rate of eleven and one-fourth per cent.

In witness whereof the said Union Insurance Company of New Orleans have caused these presents to be signed by their president and attested by their secretary, at their office in the city of New Orleans, State of Louisiana, on the sixth day of July, 1868.

Attest. [SEAL.]

President.

Secretary.

(Endorsed:) Steamboat hull. No. 784. Union Insurance Company of New Orleans to A. H. Sieward & A. P. Kip, on st'b't A. G. Brown. $3,000, at 11¼ per cent..... $337 50
Policy .....

$337 50

155 Expires January 6, 1869. Produced 23d Jan'y, 1872. M. M. Cohen, U. S. com'r. 9243. 24. Filed Feb'y 28, '72. K. Loew, d'y cl'k. 6689. U. S. circuit court. Filed March 30, '72. F. B. Vinot, d'y cl'k.

156 *Rules and regulations for the government of pilots of steamers navigating the rivers flowing into the Gulf of Mexico, and their tributaries.*

[SEAL.] Revised and adopted by the board of supervising inspectors, January 26, 1869, as authorized by acts of Congress, to provide for the better security of the lives of passengers on board of vessels propelled in whole or in part by steam.

RULE I.—When steamers are approaching each other the signal for passing shall be one sound of the steam-whistle to keep to the right, and two sounds of the steam-whistle to keep to the left. These signals to be made first by the ascending steamer. If the dangers of navigation, darkness of the night, narrowness of the channel, or any other cause, render it necessary for the descending boat to take the other side, he can do so by making the necessary signals, and the ascending steamer must govern herself accordingly. These signals to be
157 observed by all steamers, either day or night.

RULE II.—Should steamers be likely to pass near each other, and these signals should not be made and answered by the time such boats shall have arrived at the distance of eight hundred yards from each other, the engines of both boats shall be stopped, or should the signal be given and not properly understood from any cause whatever, both boats shall be backed until their headway shall be fully checked, and the engines shall not be again started ahead until the proper signals are made, answered, and understood. Doubts or fears of misunderstanding signals shall be expressed by several short sounds of the whistle in quick succession.

RULE III.—When two boats are about to enter a narrow channel at the same time, the ascending boat shall be stopped below such channel until the descending boat shall have passed through it; but should two boats unavoidably meet in such a channel, then it shall be the
158 duty of the pilot of the ascending boat to make the proper signals, and when answered by the descending boat to lie as close as possible to the side of the channel the exchange of signals may have determined, as allowed by rule first, and either stop the engines or move them so as only to give the boat steerage-way, and the pilot of the descending boat shall cause his boat to be worked slowly until he has passed the ascending boat.

RULE IV.—When a steamer is ascending and running close on a bar or shore, the pilot shall, in no case, attempt to cross the river when a descending boat shall be so near that it would be possible for a collision to ensue therefrom.

RULE V.—No pilot of a descending steamer shall run down any island chute which is not the usual channel of the river, except such chutes as are designated by these rules, or may hereafter be designated by the board of supervising inspectors.

RULE VI.—When any steamer, whether ascending or descend-
159 ing, is nearing a short bend or point where, from any cause, a steamer approaching in an opposite direction cannot be seen at a

distance of six hundred yards, the pilot of such steamer, when he shall have arrived within six hundred yards of that bend or point, shall give a signal of one long sound of his steam-whistle as a notice to any steamer that may be approaching, and should there be any approaching steamer within hearing of such signal, it shall be the duty of the pilot thereof to answer such signal by one long sound of his steam-whistle, when both boats shall be navigated with the proper precautions, as required by preceding rules.

RULE VII.—When a steamer is running in a fog or thick weather it shall be the duty of the pilot to sound his steam-whistle at intervals not exceeding two minutes.

RULE VIII.—When steamers are running in the same direction, and the pilot of the boat which is astern shall desire to pass either side of the boat ahead, he shall give the signal as in Rule I, and the
160 pilot of the boat ahead shall answer by the same signal, and allow the other to pass on the side selected, and shall in no case attempt to cross her bow or crowd upon her course.

RULE IX.—When boats are moving from their dock or berth, and other boats are liable to pass from any direction towards them, they shall give the same signal as in case of boats meeting at a bend; but immediately after clearing the berth so as to be fully in sight, shall be governed by Rule II.

RULE X.—All barges when towed by steamers and navigated between sunset and sunrise shall have their signal-lights, as required by law, placed, in a suitable manner, on the starboard bow of the starboard barge, and on the port bow of the port barge, which lights shall not be less than ten feet above the surface of the water.

RULE XI.—Steamers descending the Ohio and Mississippi Rivers, between Louisville, Ky., and New Orleans, La., shall not run down any island chute, either by day or night, except those herein or hereinafter designated, unless such chutes are the usual channel of the river.
161

RULE XII.—The following island chutes may be navigated by descending steamers on the Ohio River, between Louisville, Ky., and Cairo, Ill., when the river shall be sufficiently high for them to do so with safety, viz: Blue River Island, Diamond Island, Golconda Island, Sister Islands, Stewart's Island, and Cumberland Island, either by day or night, and Wabash Island chute, by daylight only.

RULE XIII.—The following island chutes on the Mississippi River, between Cairo and New Orleans, may be navigated by descending steamers during daylight, when the river shall be sufficiently high for them to do so with safety, viz: Islands Nos. 8, 34, 35, 40, 41, (called Paddy's Hen,) 46, (or President's Island,) 65, 75, (or Ozark Island,) 76, 93, 97, 109, (Palmyra Island,) 110, (or Big Black Island,) 116, (or Glasscock's Island,) or 123, (or Profit's Island.)

RULE XIV.—The following island chutes may be navigated
162 by descending steamers during the night, when the river may be sufficiently high for them to do so with safety, viz: Islands Nos. 8, 34, 41, (or Paddy's Hen,) 65, 76, 93, 97, 109, (or Palmyra Island) 110, (or Big Black Island,) 116, (or Glasscock's Island.)

RULE XV.—Ascending steamers are not prohibited from running island chutes.

XVI. Signal-lights for steamers under way are provided [illegible] carried between sunset and sunrise [illegible] tall, a bright white light [illegible] through ten points of the com-

pass on each side of the ship, viz: from right ahead to two points abaft the beam, and to be visible at least five miles. On the starboard side a green light, and on the port side a red light; each to throw the light through ten points of the compass, on their respective sides, viz, from right ahead to two points abaft the beam, and to be visible at
163 least two miles. These colored lights are to be fitted with inboard screens, projecting at least three feet forward from the light, to prevent them from being seen across the bow.

For steamers navigating waters flowing into the Gulf of Mexico, a red light on the outboard side of the port smoke-pipe, and a green light on the outboard side of the starboard smoke-pipe. These lights to show both forward and aft, and also abeam on their respective sides.

For coasting steamers and those navigating bays, lakes, or other inland waters, other than ferry-boats and those above provided for, the red and green side-lights as prescribed for ocean steamers, and a central range of two white lights, the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel; the head-light to show through twenty points of the compass, namely, from right ahead to two points abaft the beam on either side of the vessel; and the after light to show all around the horizon.

For steamers towing other vessels, the colored lights will be the same as prescribed for ocean steamers; and two white mast-lights
164 shall also be carried vertically, to distinguish them from other steamers, the white lights to show through twenty points of the compass, viz, from right ahead to two points abaft the beam, on either side of the vessel, white lights shall also be placed on the extreme outside of the tow on either hand, and also on the exteme after part of the same.

RULE XVII.—A bright white light, not exceeding twenty feet above the hull, shall be exhibited by all steamers when at anchor, between sunset and sunrise, in a globular lantern of eight inches diameter, so placed as to show a good light all around the horizon.

(Signed) W'M BURNETT,
" W'M BRADFORD,
" DAN'L G. TAYLOR,
" CHA'S L. STEPHENSON,
" J. V. GUTHRIE,
" JNO. S. DEVENNY,
" ALFRED GUTHRIE,
" ASAPH S. BEMIS,
" W'M ROGERS,

Supervising Inspectors of Steamboats.

165 (Endorsed:) U. S. circuit court. Filed March 30th, '72. F. B. Vinot, d'y clerk. Sieward & Kip vs. Steamer Teutonia. 9243. ered by libell'ts, Dec'r 23, '71. K. Loew, d'y cl'k.

(Here follow 3 diagrams, marked page 165.)

166 United States circuit court, fifth circuit, district of Louisiana.

CLERK'S OFFICE,
New Orleans, Nov. 12th, 1872.

I certify that the enclosed seven diagrams are [illegible] the agreement filed Nov. [illegible], 1872, [illegible]

transcript of the record in the case of Sieward & Kip vs. Steamshi Teutonia, No. 6689.

Attest:

F. A. WOOLFLEY, *Clerk.*

(Endorsed:) Certificate relative to documents.

(Indorsement on cover.) No. 309. Sieward & Kip, appellants, vs The Steamship Teutonia, &c., Joachim Meyer, master, &c. Louisiana C. C. U. S. Filed 3d December, 1872.

United States Supreme Court.

October Term, 1873.

SIEWERD & KIP,
APPELLANTS,
vs.
STEAMSHIP TEUTONIA ET AL.,
APPELLEES.

No. 309.

Appeal from the U. S. Circuit Court for the Fifth Circuit and District of Louisiana.

BRIEF FOR PLAINTIFFS AND APPELLANTS.

This is a suit for damages arising from a collision between the river steamer *A. G. Brown* and the ocean iron steamship *Teutonia*. The collision occurred on the Mississippi, at a short distance from Woodland plantation landing, on the night of December 30, 1868, between the hours of 11 and 12 o'clock, and resulted in the sinking of the smaller steamer in 30 feet water, and the entire escape of the *Teutonia* from injury. The case was tried twice before the district judge; the second time, on the prayer of the libellees for a jury, the judge was assisted by two experts, and the judgment was, on both trials, in favor of the libellants, on the ground that the "collision

"was the result of carelessness and negligence on the "part of the steamship *Teutonia*." (Rec., pp. 27, 31.) The claimants appealed to the circuit court, where the judgment appealed from was reversed, on grounds not apparent, and libellants appealed to this honorable court.

ASSIGNMENT OF ERRORS.

1st. The circuit court erred in reversing the judgment of the district court and dismissing the libel, with costs in both courts.

2d. And in decreeing that the fault was on the side of the *A. G. Brown*.

3d. And in not decreeing that the fault was on the side of the *Teutonia*.

4th. And in not affirming the judgment of the district court sitting in admiralty.

ARGUMENT.

The *A. G. Brown* was a steamer of 135 tons, engaged in trade on the Mississippi river, between the city of New Orleans and the Southwest Pass, stopping on her way down at the various plantations on both sides of the river, landing supplies and passengers; and on her way up conveying to the city passengers and the produce of the plantations. She was a regular coast packet, as such boats are called, plying on the river between the city and the plantations, and running day and night, in all sorts of weather; and, in fact, as much of a necessity for the planters and agriculturists of that section as the Brooklyn ferries for those of Long Island.

The uncertain character of this steamboat business in

the Southwest is well known. The boats decay very rapidly. They are universally propelled by steam-engines of high pressure. The risk of explosion, the dangers of fire and water, snags, stumps, &c., added to those resulting from collision, make steamboating one of the most hazardous commercial enterprises of the Southwest, and in which the usual guaranties from insurance are wanting. In the present case the value of the *A. G. Brown* is proved to be from $4,500 up to $18,000, and the commissioner finds, as a fact from all the evidence, her actual value to be $9,000 at the time of the collision. Yet the insurance company, for the purpose of river insurance, had valued her at $4,500; and on this valuation had insured but $3,000 at a fabulous rate of premium, *eleven and a quarter per cent. for six months*, and thus making the owner his own insurer for all over the amount covered. The terms of the policy on page 54 are very noteworthy, and show the movement of the steamboat business. In view of all these facts, we start with the presumption in our favor that the *A. G. Brown* was under the management of men deeply interested in avoiding a collision, and that from the nature of her business she was properly engaged in navigating the river at the time.

The *Teutonia* was an ocean iron steamship of over 2,400 tons burden, which had just arrived from Hamburg. She was, therefore, very nearly *twenty times* the tonnage of the *A. G. Brown*. She had "a cargo of assorted merchandise, "and passengers."

It is very clear that those in charge of the *A. G. Brown* would avoid a collision with the *Teutonia* with all the care and diligence possible.

It is customary when a steamer descends the river to sea to follow the current as near as possible in the middle of the river; while, on the other hand, a steamer coming from

sea and ascending the river goes as near as possible from point to point.

The configuration of the river at *Pointe à la Hache* is as its name designates, and is shown by the map of the Mississippi river.

The night of the collision was December 30, 1868; the hour, between 11 and 12; the place, the Mississippi river, where it was from three-fourths to one mile wide, near the Woodland plantation, about 45 miles below the city of New Orleans. The *Teutonia* was ascending the river; the *A. G. Brown* was engaged in crossing the river from plantation to plantation in the regular course of her business.

The night was very dark and rainy, and to those on the *A. G. Brown* not very foggy. To those on the *Teutonia* "the fog was dense;" it was blowing very strong and raining very hard, and foggy.

No dispute as to the foregoing facts exists. They are not, therefore, referred to by pages in the record.

And on this indisputable statement of facts, our first point is that the *A. G. Brown* was properly engaged in her usual business; had the right to cross and recross the river, and was not bound to "lay up." And that, on the contrary, the *Teutonia* was in fault in ascending the river at that time and under those circumstances; that, by so doing, she very greatly and unnecessarily enhanced the perils of the river to the river-steamers, and that it was her duty to "lay up" for the night, either at the quarantine station or Pointe à la Hache.

At 8 h. 45 minutes, when the *Teutonia* was anchored at the quarantine station, "it was blowing very strong and "raining very hard, and foggy." (Rec., p. 20.) At 9 h. 50 minutes "we left that place and proceeded up the river "with clear weather. Got up to Pointe á la Hache settle- "ment. It then became foggy." (Rec., p. 20.) "We went

" to anchor on account of the fog, rain, and blowing, and " also to ascertain the damage done to the ship. It is not " usual for a steamship to go up the river on such a night " as that on which the collision occurred. I was caught " in a fog, and *was trying to make a shore to my* PORT *side*, " *to come to an anchor and remain there until the fog* " cleared up. I was justified by the condition of the " weather in going as far up the river as I did on that " night. As soon as I discovered that the fog was so " thick I gave orders to go slowly, and was looking for a " proper place to anchor when the collision took place. " The weather was favorable to come up the river about " twenty minutes before the collision happened."

Rec., p. 22.

These extracts from the testimony of William Nelson, the pilot then in charge of the *Teutonia*, form a conclusive *ex ore tuo* argument in our favor on the first point. (See also testimony of the captain of the *Teutonia*, on page 23.) Nor can this fault in the *Teutonia* be regarded *as causa remota non proxima*. It is both the *causa-causans et causa sine quâ non*.

Steamship *Pennsylvania*, Sup. Court, 3–26, '74.
City of New York, 8 Blatchford, 197.
The *Pennsylvania*, 9 Blatchford, 451.
Ward *vs.* The *A. Rossiter*, 6 McLean, 63.

2d. The *Teutonia* was ascending the river, enveloped in an impenetrable and sudden fog, in profound silence. It was "the duty of the pilot to sound his steam-whistle at " intervals not exceeding two minutes." This duty was totally neglected.

See Rule VII, Rec., p. 58.

3d. The *A. G. Brown*, after completing her business at Woodland plantation and taking in sugar, backed away from the shore and rounded to, and then blew three long whistles. Durab calls this "a general signal in case any "boat was coming up or down;" Nelson, the pilot of the *Teutonia*, "the customary shore signal."

Rec., p. 20.

"The customary signal to announce to planters on "shore that the boat was passing."

Canton Jur., p. 11.

At this point of time the two pilots of the *A. G. Brown* were at the wheel, Captain Bassett on the promenade deck, right forward, near the jackstaff, and a watchman below, (on the main deck.) This promenade deck extended out in front from the smoke-stacks to the flag-staff. On the *Teutonia* the pilot, Nelson, was on the foretop-sailyard, the captain and second officer on the bridge, two men forward on the lookout, the third officer and quartermaster on the quarter-deck, and the whole starboard watch on deck. The *Teutonia* heard this signal distinctly, but both boats were excluded from sight by the fog.

The *A. G. Brown* was 600 or 700 yards from east shore.

Rec., p. 5.

But where was the *Teutonia?* She was coming up the river, and, caught in a fog, "was trying to make a shore "to her PORT side, to come to an anchor and remain there "until the fog cleared up."

Rec., p. 22.

The *Teutonia* answered the signal; yet here the con-

flict of testimony is very great, and very hard, if not impossible, to reconcile. There was no apparent lack of vigilance on either vessel at the time. On the *Teutonia*, however, probably no one understood the system of whistle-signalling but the pilot, William Nelson; whilst all on the *A. G. Brown* were on the alert, and deeply interested both in life and property, and knew well what the signalling signified. The boats "were within 250 feet "of each other," (Rec., p. 21;) "about half a mile to a "mile," (Rec., p. 5;) "two-thirds" across the river. (Capt. Bassett, p. 5.)

The pilot of the *Teutonia* was in the foretopsail-yard. Therefore he must have signalled by the whistle *indirectly; i. e.*, by order directed to the man or men at the wheel of that vessel. This fact becomes clear on a careful perusal of the testimony of Captain J. Meyer: "The "orders given by the pilot were promptly executed." There is no direct evidence of any one being at the wheel of the *Teutonia*. But "the second officer and myself (were) on "the bridge." (Testimony of Captain Meyer, Record, page 22.) And the *Teutonia's* pilot says he "don't know how "many quartermasters were at the wheel." (P. 21.)

On the *A. G. Brown*, Captain Bassett "was on the "promenade deck, right for'ard, near the jackstaff." (Rec., p. 9.) Both bilots were at the wheel through the entire collision. (Armstrong, Rec., p. 18.) Therefore their signals by the whistle were *direct*, and executed at once.

Through the mist of conflicting evidence we see clearly the great fault of the *Teutonia* attempting to navigate the river in that fog, and groping about for an anchorage. Had the *Teutonia* been an American or English steamer, the orders of the pilot might have been understood and executed with some confidence; yet still it was fault in the *Teutonia* in being under headway.

But at this point all conflict of evidence ceases. Since the invention of the steam-whistle, that little conservator of person and property, and the formidable enemy of admiralty proctors, nothing so affects the officers and men pecuniarily interested in running a practically uninsurable steamboat on the Mississippi and its tributaries as the "CROSSING OF THE WHISTLES." Whatever the whistle-signals were between these boats on this night, it is quite certain that either there was a "*crossing of the whistles*," or that the *A. G. Brown* made no reply whatever to the whistle-signals of the *Teutonia*. On either of these hypotheses the action of the *Teutonia* was faulty; that of the *A. G. Brown* prudent, proper, and in strict accordance with the rules of navigation. Let us examine both of these hypotheses.

FIRST. That when the *A. G. Brown's* three whistles had been given, indicating, *first*, a river-packet engaged in stopping at plantations; *second*, ascending, descending, or crossing the river; *third*, in the act of rounding-out from the shore, either to cross the river or take the middle of the stream, this latter being the proper position of a descending boat, the *Teutonia* then signalled by blowing one whistle for the starboard shore, according to the testimony of Nelson, her pilot, and J. Meyer, her captain, corroborated by her lookout men, (pp. 21, 22, and 23;) and that the *A. G. Brown* made no reply, either to this signal or to any signal afterwards made by the *Teutonia*, which were heard by the latter. Let us look at the case as though this hypothesis were fully proved. Then the *A. G. Brown* was most manifestly in fault, and legally unable to recover in this suit, unless the whistle, for some reason legally excusable, would not, on that occasion, sound. In such an event we contend the *A. G. Brown* followed literally the

course laid down for her by "the rules and regulations." (Rec., p. 57.) Her engines were stopped until her headway was fully checked, and were not again started ahead until the boats were far asunder and all the damage done. Indeed, the witnesses on board of her agree that at the instant of collision, the engines of the *A. G. Brown* were either backing (Durab, p. 4; Bassett, p. 9; Canton Jur., p. 12,) or had been stopped for some minutes. (*Ibid.*) Fortunately, the only witness on board the *Teutonia* who could understand and appreciate the actions and sayings of those on the *A. G. Brown*, to wit, the pilot, William Nelson, fully corroborates it, for he says: "I heard no orders given "on the *Brown*, except the order to back her, which was "given just about the time she struck the *Teutonia*." (Rec., p. 22, at top.) In the necessary progression of matters and things, the engines of a steamer must be in a state of rest before, by their means, movement backward or forward in the vessel can be possible.

But whilst the *A. G. Brown* did thus comply with the requirements of Rule II, p. 57, the *Teutonia* utterly failed to do so. "Should the signal be given, and not properly "understood from any cause whatever, both boats shall be "backed until their headway shall be fully checked, and "the engines shall not be again started ahead until the "proper signals are made, answered, and understood." Her pilot says: "As soon as I discovered that the fog was "so thick, I gave orders to go slowly," &c. (Rec., p. 22.) Her captain: "The steamer *Teutonia* was at that time "going slow." The second engineer in charge: "The ma- "chine of the *Teutonia* was stopped before the collision. "The steamship was going very slow before the engines "were stopped. The orders given were immediately obeyed "by me."

Rec., pp. 22, 23.

The *Teutonia's* engines were *slowed*, but she was advancing against the current of the river, not, it is true, as rapidly as though the full pressure of her steam was being exerted upon her engines, but nearly so. The *slowing* reduces the speed somewhat, perhaps one-fourth, one-third, or one-half, and much facilitates *stopping*. Fortunately, the elements are here for a tolerably exact calculation. The *Teutonia* left the quarantine station at 9 h. 50 m., and the collision occurred at 11 h. 45. (Nelson, on page 20.) The distance is about 24 miles by the river. Hence, she must have steamed over twelve miles per hour against the stream before she was *slowed*. Admitting the fullest measure of reduction for slowing to be one-half, and she was going through the water in the midst of a fog at *six* miles an hour against the stream after she had heard the rounding-out signal of the *A. G. Brown*, and could get, as she avers, no reply to her signals.

Rule II required her to fully check her headway, and not again start her engines ahead until, &c.

But the stopping of the engines of the *Teutonia*, the discovery of the *A. G. Brown* two points by the compass on the port-bow, and the colliding, were almost contemporaneous. "About three minutes," says the *Teutonia's* pilot. "*A short moment afterwards*," (AFTER "we stopped the en-"gines,") says her captain, evidently translating his German idea into English, and reducing what the pilot calls "minutes" into "seconds."

Rec., pp. 22, 23.

The pilot evidently had no idea of fully checking the progress of the *Teutonia* from the very beginning, for he says: "I gave orders to stop the steamship-engines, and *to* "*keep the ship steady northwest half-west.*"

Rule II required both boats' engines to be stopped and backed until their headway should be fully checked.

Second. But the first hypothesis is, we submit, on all the evidence herein, simply incredible. It seems entirely out of the question to dispose of this case on the ground that the *A. G. Brown* made only the first signal of three whistles and gave no farther signal whatever, either on her own account or in reply to the signals of the *Teutonia*. But it was fault of the grossest character on the part of the *Teutonia* for her, after hearing the first signal, loud and strong, to assume that the *A. G. Brown* would or did, from any cause, abstain from all farther signalling by her whistles. And thus we are brought to the other hypothesis, and show that the solution of the case depends upon the truth of its contradictory, to wit: that the *A. G. Brown* did make reply to the whistle-signals of the *Teutonia;* which, we submit, has been fully proved.

If this train of reasoning be valid, and we think it is, it follows irresistibly that the opinion of Captain Dalféres, the assessor, is correct in law and fact: "Under such cir- "cumstances, instead of proceeding on her course, she "(the *Teutonia*) should have stopped her engines and "waited until satisfied of the position of the descending "boat," &c.

Record, p. 30.

The assessor Beals can only work out a solution in favor of the *Teutonia* by rejecting all the evidence of those in charge of the *Brown* at the time of the accident, because confused and contradictory, and by treating the rules and regulations of the river as "not applicable to their case."

The district judge found his original opinion fully and satisfactorily confirmed by an able and expert river navi-

gator, hitting the fault of the *Teutonia* exactly, and assigning most judicious reasons for his conclusion.

The circuit judge has unfortunately assigned no reasons for his reversal of the judgment of the district court.

Some additional facts strongly confirm the fault of the *Teutonia*, as above exposed.

First. The *A. G. Brown*, if she wished it, had the right, as a descending boat, to take the east bank of the river, "if the dangers of navigation, darkness of the night, "narrowness of the channel, *or any other cause*, render it "necessary," provided she makes "the necessary sig- "nals;" and the ascending steamer must govern herself accordingly. (Rule I of Rules and Regulations.)

Rec., p. 57.

We submit that the weight of evidence shows very clearly that this choice of the east bank of the river was made by the *A. G. Brown;* was adhered to only so long as prudent; that she came to a state of entire rest before the collision, and that she could not move in any direction without danger.

Second. The *animus* of the pilot of the *Teutonia* is a fact also in the case. A small man in temporary but absolute command and control of a very large steamer would be likely to look down with indifference, perhaps with some contempt, upon a little, paltry river-steamer. We are reminded of the fable. "No answer was returned. Then I "blew attention-whistle, meaning *lookout for yourself*, "and no answer again. I then blew a long whistle for "starboard shore, and repeated it two or three times; no "answer at all." (Rec., p. 20, *at foot;* testimony of Wm. Nelson, pilot of the *Teutonia*.) This language indicates

no intention of stopping or backing, although both stopping AND backing were the then two sole essentials of duty. "Lookout for yourself;" that is, "I, the steamship *Teu-* "*tonia*, built of iron, and over 2,400 tons burden, am as- "cending the Mississippi with a full cargo and many "passengers, who are impatient and hurrying me, and I "call upon you, a little, frail, wooden river steamer of 135 "tons, to take care to get out of my way or *I shall run* "*you down*."

It seemed to those on the *A. G. Brown* that the *Teutonia* did not stop, but continued her course after the collision. What was the good in her waiting to see what damage she had done? what property destroyed? what lives sacrificed? It was difficult to find the spot where the *Teutonia* was even scratched; and yet the "inspectors for "underwriters" certify that the "marks of the collision on "the ship are so far aft that it is evident that she did not "run into the *Brown*, but that the *Brown* struck her as "above stated."

Rec., p. 24.

THIRD. These inspectors and general marine and river surveyors, after a "careful examination" and "mature re- "flection," can arrive at no other conclusion than that the *Brown* struck the *Teutonia* (*with her head down stream*) a glancing blow with her lower guards, and also with parts of her upper works—probably the corner of her wheel-house—and passed astern of the *Teutonia*. Their certificate is dated January 5, 1869. On February 13, 1870, a sub-marine diver visits the sunken *A. G. Brown*, and his report puts an end to all doubt on the point where she was struck by the *Teutonia*, as well as with the assertion, "*with* "*her head down stream*." This report also confirmed the good faith of libellant's witnesses.

See Rec., p. 19.

FOURTH. It is not proved clearly, but the evidence connected with the diagrams and the witnesses' testimony render it highly probable that, even if William Nelson, the *Teutonia's* pilot, failed to hear the *A. G. Brown's* signal-whistle, yet that he was in the very act, then and there, of crossing the river, contrary to the express prohibition of Rule IV. Durab says: "She came from the opposite side "of the river and crossed the bow of the *Brown*." (Rec., p. 5.) "I blew two whistles, and she was still on the left "bank coming up." (Rec., p. 4, *Ibid.*) Thomas Brown says: "It seemed to me that the *Teutonia* was coming "up stream, and then must have crossed the river and "struck us." (Rec., p. 6, at foot.) Captain Bassett is much more positive: "A steamship * * * "was coming up the river from the other or west shore. "That steamship blew two whistles, which signal meant "that she was coming up for the larboard side of the river, "on the left-hand side coming up." (Rec., p. 8.) "During the time that the boats were signalizing each other "the *Teutonia* must have crossed the river on the side the "*Brown* was descending." (Canton Jur., Rec., p. 11.) "The sound of the approaching vessel came apparently "from the opposite shore, which would be our starboard "side." (*Ibid*, Rec., p. 11.) "In losing sight of the "west shore the *Teutonia* blew one whistle for the *Brown* "to go back to the west shore, which she did not do." (Armstrong, Rec., p. 17.) This testimony seems clear. Now, Nelson, the *Teutonia's* pilot, says, (Rec., p. 21:) "I "then discovered," as the two boats were rapidly nearing each other, "a steamboat, with green and red lights, on the "port-bow two points by the compass. The *Brown* was "two points on my port-bow, by the compass, when I saw "her lights." "The *Teutonia*, at the time of the collision, "was in the usual track of steamers ascending the river."

He does not say that the *Teutonia* "was ascending the "Mississippi river *on the starboard shore*," as alleged in the libel; but he does say, "I was caught in a fog, and "was trying to make shore *to my* PORT *side*, to come to an "anchor, and remain there until the fog cleared up."

Rec., p. 22.

"Two points on my port-bow," we submit, shows clearly that the *Teutonia* could only see the *A. G. Brown* whilst the former was actually crossing from one side to another.

To resume: The faulty acts of the *Teutonia* making her liable to the libellants in this case are:

First. Running through a dense fog, at her usual rate of speed, and only slowing when she hears the signals of a descending boat.

Second. Running through a fog without sounding her steam-whistle at intervals not exceeding two minutes.

Rule VII.

Third. In not slowing, stopping, and backing before the collision.

Rule II.

Fourth. In crossing the river when a descending boat was so near that it would be possible for a collision to ensue therefrom.

Rule IV.

Fifth. In following the bend of the river, instead of ascending the river from point to point, in the usual way, which would take her at least half a mile from the place of collision.

Lastly. And in being out of her proper place on the river. She should not have attempted to navigate the river at all on that night.

Nor can the charges of fault alleged against the *A. G. Brown* be sustained. They are three in number, viz:

First. She did not reply to the signals of the *Teutonia.* This, we submit, has not been proved; but the contradictory of it is fully supported by the evidence. And even if it were proved, it furnishes no excuse for the *faulty* acts of the *Teutonia.*

Second. In not putting her helm to port.

But it is fully proved that she was motionless on the water; and putting her helm in any position would not have affected her direction.

Third. For running into the *Teutonia.*

After the diver's report, it is not probable that the libellees will insist farther on this point.

And, on the whole case, we submit, with the greatest confidence, that the decision of the district court should be affirmed and that of the circuit court reversed.

DURANT & HORNOR,
Attorneys for Appellants.

Washington, D. C., *February* 23, 1874.

Supreme Court of United States.

SEWARD & KIP
v.
THE STEAMSHIP TEUTONIA. } No. 38.

Brief of P. PHILLIPS.

For Appellee.

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For Appellee.

This is an appeal from the decree of the Circuit Court, United States, for the District of Louisiana, (p. 47,) dismissing the libel filed by the appellants to recover damages for collision with the steamboat, A. G. Brown, about 11 o'clock of the night of 30th December, 1868, on the Mississippi River.

The Teutonia is a foreign steamer of the Hamburg-American Steam Packet Company, engaged in commerce between Hamburg and New Orleans.

The A. G. Brown, is a steamer of 135 tons, engaged in commerce between the port of New Orleans and the South West pass of the Mississippi River.

There is no pretence that the collision was *wilful* on the part of the Teutonia. The collision was therefore *accidental*, and whether the accident is to be attributed to the want of dilligence or skill in those who controlled the Teutonia, is the question to be solved, in considering

whether the decree below should be affirmed or reversed.

Whatever may be the rule elsewhere, it is the settled doctrine of this court, that where a collision occurs without the negligence or fault of either party, each should bear his own loss.

Stainback v. Rae et al., 14 How., 538.

Immediately on the arrival at New Orleans the Teutonia caused a protest to be entered and a survey to be made by the "general marine and river surveyors," whose report is dated 5th January, 1869, and is found at p. 24, and the protest at p. 44.

After a minute detail of the damage to the ship, and the marks left on her side, they say, "after a careful examination of the ship, and mature reflection upon the subject, we can arrive at no other conclusion than that the "Brown" struck the Teutonia (with her head down stream) a glancing blow with her lower guards, and also with part of her after works, probably the corner of her wheel house, and passed astern of the Teutonia. The marks of the collision on the ship are so far aft that it is evident she did not run into the Brown, but that the Brown struck her as above stated."

On the 5th December, 1871, the district judge made an order that two persons experienced as masters and pilots be appointed as assessors, who, having heard the evidence and arguments, shall give their opinion touching the matters in controversy. p. 28.

The written opinions of these experts are to be found at pp. 30, 31.

Dalferes, chosen by the libellant, holds the Teutonia responsible on the grounds—

1. That the Brown gave three whistles as signal of her

presence in the river. That they were heard by the Teutonia, and though afterwards giving repeated signals herself, she heard none from the Brown.

2. That under such circumstances, instead of proceeding on her course under headway of steam and engine, she should have stopped her engine.

3. That the Brown not understanding the signal she heard from the Teutonia, did all that was required of her.

On the contrary, Beales, the other expert, comes to the opposite conclusion, as the evidence proved to him that when the Teutonia heard the Brown's three whistles, she gave the customary signal for the right bank ascending, and the engines were stopped, and her helm put hard a port in accordance with the rules of navigation of ascending and decending boats. He rejects the evidence of the witnesses on the part of the Brown, "as it is confused and contradictory."

The district judge decreed in favor of the libellant, and on appeal the circuit judge reversed the decree made by Judge Durell, and dismissed the libel with costs, from which decree this appeal is taken.

We need not particularly inquire whether the Brown was in fault; for whether she was, or was not is immaterial, if it be shown that the Teutonia was not in fault.

In making this inquiry we should first ascertain whether the Teutonia violated any law or rule of navigation for the prevention of such accidents.

By the act 29 April, 1864, Art. 3, it is provided that all steam vessels shall carry at the foremast head a bright white light, on the starboard side a green light, and on the port side a red light.

Art. 13. If two ships under steam are meeting end on, or nearly end on, so as to involve risk of collision, the helms of both shall be put to port, so that each may pass on the port side of the other.

Art. 16. Every steam ship when approaching another ship, so as to involve risk shall slacken her speed, or, if necessary, stop and reverse; and when in a fog, go at a moderate speed.

Art. 19. Nothing in these rules shall exonerate any ship from the consequences of any neglect to carry lights or signals, or of any neglect to keep a proper lookout, or the neglect of any precaution which may be required by the ordinary practice of seamen, or by the special circumstances of the case. 13 Stat., 58.

The same regulations have been made in many other governments, including that of Hamburg, to which port the Teutonia belongs.

The Scotia, 14 Wall, 187.

THE LIGHTS.

The evidence shows that the rules laid down in the act were strictly complied with.

Nelson, the pilot of the Teutonia says: "There was a white light at the mast head, a very large white light in a lantern, more than two feet in diameter; also a red light on her port side, and a green light on her starboard side." p. 21.

This is also testified to by Captain Meyer, p. 23, and by Groveman and all the other officers.

Both the pilot, Duval, and the captain, Bassett (of the Brown) admit they saw the white light at the masthead of the Teutonia, pp. 5, 8, and it is evident the dense fog

and rain alone, prevented their seeing the red and green lights.

In this connection it is proper to advert to the character of the night when the collision took place.

THE NIGHT.

The collision occured in the Mississippi, about 11 p. m., 46 miles below Point a la Hache. Nelson the pilot of the Teutonia says, "it was blowing very strong and raining very hard, and was foggy when we anchored at the Quarantine, about nine.

We left there about ten, and proceeded up the river with clear weather. When we got to la Hache, it became foggy. I then went on the foretopsail yard.

Immediately after the collision we cast anchor. This on account of the fog, rain and blowing.

It is not usual for a steamship to go up the river on such a night as that on which the collision occurred. I was caught in a fog, and was trying to make a shore on my port side, and remain there until the fog cleared up. I was justified in going up the river as I did. As soon as I discovered that the fog was so thick, I *gave orders to go slowly*, and was looking for a proper place to anchor when the collision occurred. The weather was favorable to come up the river about twenty minutes before the collision took place." p. 22.

Captain Meyer testifies: "Before the collision occurred, it was so dark that I could see no shore. We met this fog about 15 or 20 minutes before the collision. It arose suddenly. Just before the collision we concluded to come to anchor on account of the thickness of the fog." p. 23.

Further he says, the weather was favorable for going

up the river unless the fog enveloped us. I saw some steamers going up with sailing vessels in tow. p. 23.

All the other officers testify to same effect.

Bassett, the captain of the Brown, says, that at the time the whistle was blown the Teutonia was on the right bank. The wind was blowing a gale from that shore. p. 5.

Brown, the engineer, who was on the larboard guard says: "It was very dark and rainy, and not very foggy." But when cross-examined, admits he "could not see the shore quite distinctly on account of the fog and darkness." Further he says when he "first saw the Teutonia she was not more than *ten yards* from us."

Considering the great size of the steamer nothing can better illustrate the intense darkness than this statement.

Green, the other engineer of the Brown, testifies: "It was a dark rainy night. The night was very dark."

An attempt is made to shake this evidence by a new examination of Bassett. He then swears: "It was *not foggy* at the time, not much rain, a *misty rain*, a strong breeze blowing, *both shores could be plainly seen.*"

Yet, unmindful of these assertions, on his further examination he admits that he did not see the Teutonia "until she was about *thirty yards from us.*"

That is he could see distinctly the flats of the river which is three quarters of a mile wide—and not see at all a steamer of two thousand four hundred tons burthen, further than thirty yards.

But the falsity of this evidence, intended to charge the Teutonia, is fully exposed by a witness of the libellant himself, whose position and duties are best fitted to speak on the subject.

Armstrong, the pilot of the Brown, swears that "at the time of the collision it was *very foggy* and *misty*, and there was a *heavy rain*. It was *so foggy I could not see the shore*. The Teutonia ran about *three lengths* after I first saw her before she struck the Brown." p. 18.

Bassett was first examined on 25 January, 1869, then re-examined on 25 February, 1870, more than a year afterwards. On the 17 March, 1870, he calls Armstrong as a witness whose testimony on the point under consideration most flatly contradicts him. Comment on Bassett's testimony is unnecessary.

THE PRECAUTION OF THE TEUTONIA.

As soon as the Teutonia was overtaken by the sudden fog at la Hache, the pilot went on the foretop-sail yard where he could obtain the best lookout. He heard, he says, a steamboat blowing three whistles, the customary shore signal, and gave immediate orders *to go slow*, and blew one whistle for starboard shore, or east bank of river. No answer was returned. He then blew a long whistle for starboard shore and repeated it two or three times, and still no answer. After he had repeated the long whistle, the order was given to *stop the engines*, and keep the ship steady northwest half west, which was done.

He then discovered the steamboat on the port bow two points by the compass. I ordered the wheel *hard to port*, which was immediately executed, and the steamboat struck the steamship on the port side, one hundred and fifteen feet to the aft of the stern. I heard the order on the steamboat to back her and then she was a longside, head down stream. p. 21.

Captain Meyer testifies that "the order of the pilot

to put the helm hard to port had the effect to bring the Teutonia nearer to the left bank. The orders were promptly obeyed. He describes the whistles as the pilot does, and says the steamer at that time was going slowly. That a few minutes thereafter saw a light two points on their port bow, the engines were then stopped and the helm put hard a port. Heard a voice on the Brown giving orders to "back out" but it was then too late. p. 22.

Palm, the engineer, swears that at the time he was in charge of the engines; that they were stopped before the collision, and that the ship was "going *very slow*, before the engines were stopped. The orders given were immediately obeyed." p. 23.

THE WATCH.

A very material inquiry on such a case is as to the degree of vigilance of the officers in keeping a proper lookout. As already seen the pilot was on the fore topsail yard. The captain testifies that he and the second officer were on the bridge, two men forward on the lookout, the third officer and quarter master on the quarter deck, and the whole starboard watch on deck. p. 22.

Sahling, one of the crew, says he was on the lookout forward at the time of collision, was on the forecastle forward, and corroborates the testimony of the Captain. p. 23.

Gronerman says, I and the other lookout kept a sharp lookout. I have heard the testimony of the captain, and know the facts stated by him are true and correctly stated."

The second officer, the third officer, the second boatswain and the quartermaster testify they were all on deck

at the time, and they corroborate the statement of the captain.

If this evidence is credited, it is too apparent to need argument, that the Teutonia fully complied with all the requirements of the statute, and was not wanting in any diligence or skill in her navigation.

The positive statement of these witnesses that the ship was going slowly before the collision and was stopped at the time it occurred, is contradicted by the averment in the libel, "that after the warning, to which no attention was paid, the steamship came on with a full head of steam."

Bassett, in his first examination, says, "*As far as I could see* she was under headway all the time." Subsequently he essays to better this, clearing up the uncertainty of his visual power by the assertion "she passed us *like a streak!*" The velocity of light is the only parallel his imagination supplies the speed of the Teutonia rushing though darkness and fog.

But what was the opportunity of Bassett and his witnesses, to judge of the speed of the ship.

We have already seen how dark, rainy and stormy, was the night—Bassett never saw the ship until she was *thirty* yards off. The pilot says she ran about *three lengths* after she was seen and before she struck; and Brown testifies that she was but *ten* yards off when first discovered.

With a ship of 2,400 tons burthen in such close proximity in so dark and stormy a night and only discovered when she was a few yards off, we submit that persons placed in such imminent peril, as well as those on board

the Brown, were in no condition to observe speed even were we to admit they desired to testify truly.

It would seem further to be beyond question that the order to "backout" was not given on board the Brown until they had seen the ship. Those on board the Teutonia distinctly heard the order notwithstanding the storm, but it was then too late.

Brown, one of the libellants witnesses, testifies expressly—"The Brown was *going ahead at the time she was struck* by the Teutonia. *Just before the collision* the pilot rang the bell to stop her, and then he rang the bell to back her, but cannot say whether it was for both wheels or one." p. 6.

This is in entire accordance with the evidence of the Teutonia and with the view here expressed.

There is nothing to shake our confidence in the truth of the depositions given by the officers of the Teutonia. The libellant seeks to charge her on the allegation of negligence. The *onus* of proof is with him. We submit, with confidence, that he has wholly failed by satisfactory evidence to satisfy the judicial mind of the truth of the averment.

The decree of the Circuit Court must therefore be affirmed.

In the brief filed for the appellant, the argument is rested almost entirely on the "rules and regulations for the government of pilots of steamers navigating the rivers flowing into the Gulf of Mexico and their tributaries," which are presented at page 57 of the record.

These rules were adopted by the Board of "Supervising Inspectors," under the act of 30 August, 1852, "to provide for the better security of the lives of passengers on board of vessels propelled in whole or part by steam, and for other purposes." 10 Stats., 61.

After providing for the inspection of boilers &c. &c., the 18 section provides for the appointment of nine Supervising inspectors, who are to establish rules for their own government, and that of "the several Boards of Inspectors within the District, "and the 29 section, then declares that it shall be their duty "to establish such rules and regulations, to be observed by all *such* vessels in passing each other, as they from time to time shall deem necessary for safety; two printed copies of which rules signed by said inspectors shall be furnished to each of said vessels, and shall at all times be kept up in conspicuous places on *such* vessels, which rules shall be observed both night and day." Failure to observe these rules is made subject to a penalty in favor of a passenger.

"And no such vessel shall be justified in coming into collision with another if it can be avoided."

It is very plain from the preceding as well as the provisions of the subsequent sections of this act—that they apply solely to domestic vessels over which the jurisdiction of this government extends.

But the act itself, by way of abundant caution, declares in the 42 section, that these provisions "shall not apply to public vessels of the United States or vessels of other countries."

Again, these rules and regulations purport on their face to have been adopted on 26th January, 1869. As the libel was filed on the 5th January, 1869 to recover for a collision on 30th December, 1868, we shall wait with curiosity, but with no anxiety, the argument which shall demonstrate the relation that the rules of 1869 have to a collision in 1868; and the application of these rules to foreign vessels, in face of statutory provision that they shall not so apply.

P. PHILLIPS,
Solicitor for Appellee.